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U.S. GOVERNMENT
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GPO

Federal Register

2–23–00 Wednesday
Vol. 65 No. 36 Feb. 23, 2000
Pages 8841–9198

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 8, 10 and 11

[A.G. Order No. 2287–2000]

RIN 3095–ZA02

Prices, Availability and Official Status of Federal Register Publications

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces increases in the prices charged for the paper and microfiche editions of **Federal Register** publications. The price changes apply to the daily **Federal Register**, the **Federal Register** Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The Administrative Committee has determined that it is necessary to increase prices to enable the Government Printing Office (GPO) to recover the full cost of producing and distributing **Federal Register** publications. This final rule also makes amendments to acknowledge the official status and availability of online editions of the CFR and the Weekly Compilation of Presidential Documents on the GPO Access service.

DATES: This final rule is effective March 24, 2000. Comments will be accepted through April 24, 2000.

ADDRESSES: Comments should be addressed to Michael White. Written comments may be submitted by U.S. mail to the Office of the Federal Register (NF), National Archives and Records Administration, Washington, DC 20408–0001, or by private delivery services to the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001. Comments may also be submitted by email to legal@fedreg.nara.gov, or by fax to 202–523–6866.

FOR FURTHER INFORMATION CONTACT: Michael White at 202–275–4292.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register is responsible for establishing the prices charged for **Federal Register** publications. The Administrative Committee has determined that it must make price adjustments to certain publications to accurately reflect the current costs of production and distribution. This final rule will increase the subscription rates for the paper editions of the daily **Federal Register**, the **Federal Register** Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The subscription rates and the single copy prices of the microfiche editions of the daily **Federal Register** and CFR also will increase.

On September 1, 1992, the Administrative Committee adopted a policy to require revenues from subscriptions and single copy sales of ACFR publications to keep pace with printing and distribution costs, and postal rate increases. Since 1992, the Administrative Committee has periodically adjusted the prices of **Federal Register** publications in accordance with GPO cost analyses. The Administrative Committee's last price change regulation raised the prices of paper publications and lowered the prices of microfiche editions (61 FR 68118, December 27, 1996).

The final rule takes into account GPO's current analysis of its actual production and distribution costs over the past three years and projected costs for the year 2000. The Administrative Committee has determined that it is necessary to increase the prices charged for the paper editions of **Federal Register** publications by an average of 15 percent to achieve full cost recovery. This amounts to a 5 percent increase for each of the past three years since the last price changes. The increases are primarily attributable to higher labor expenses, postal rates and paper costs, and a substantial decline in sales of printed publications, causing upward pressure on the average cost per subscription. Price increases for the microfiche editions of the **Federal Register** and the CFR are the result of a competitive bidding process.

Single copy sales and subscriptions to **Federal Register** publications have declined steadily since online service on GPO Access began in 1994. The decline in sales accelerated when free access began in late 1995. Since the beginning of fiscal year 1995, the number of paid subscriptions to the daily **Federal Register** has declined by 60 per cent and sales of CFR products and other **Federal Register** publications have fallen off by more than 36 percent. As a result, a smaller subscriber base must absorb a greater share of the costs.

Over the same time period in which sales of **FEDERAL REGISTER** publications have fallen, the public has been using **FEDERAL REGISTER** publications online in large and increasing numbers. Information retrievals from online **FEDERAL REGISTER** publications have grown by 6612 percent since the beginning of fiscal year 1995. During fiscal year 1999, users retrieved 48 million individual documents from the online edition of the **FEDERAL REGISTER** and 88 million from the online CFR. These figures demonstrate that the Administrative Committee is meeting its goal for enhancing public access to **FEDERAL REGISTER** publications to provide essential information on the functions, actions and regulatory requirements of the Government.

The increased prices for **FEDERAL REGISTER** publications are reflected in amendments to 1 CFR part 11 of this final rule. The following rates will be effective March 24, 2000. The annual subscription rate for the daily **FEDERAL REGISTER** paper edition is increased to $638. For a combined **FEDERAL REGISTER**, **Federal Register** Index and LSA (List of CFR Sections Affected) subscription the price is increased to $697. The price of a single copy of the daily **Federal Register** paper edition is increased to $9. The annual subscription price of the microfiche edition of the **Federal Register**, which includes the **Federal Register** Index and LSA, is increased to $253. The price of a single copy of the daily **Federal Register** microfiche edition is increased to $2. The annual subscription price for the **Federal Register** Index is increased to $28. The

annual subscription price for the monthly LSA is increased to $31. The annual subscription rates for a full set of CFR volumes are increased to $1,094 for the paper edition, and $290 for the microfiche edition. The price of a single copy of the CFR microfiche edition is increased to $2. The annual subscription rates for the Weekly Compilation of Presidential Documents are increased to $92 for delivery by non-priority mail and $151 for delivery by first-class mail. The price of a single copy of the Weekly Compilation is increased to $4.

In addition to the price changes contained in this document, the Administrative Committee is amending its regulations in 1 CFR parts 8, 10 and 11 to acknowledge the official status and availability of the online editions of the CFR and the Weekly Compilation of Presidential Documents. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the **Federal Register** and its special editions. The CFR and Weekly Compilation are special editions of the **Federal Register**. The Government Printing Office Electronic Information Access Enhancement Act of 1993 (GPO Access), 44 U.S.C. 4101, provided additional authority for the Administrative Committee to expand public access to **Federal Register** publications, beginning with the inauguration of online **Federal Register** service on June 8, 1994.

In 1995 and 1996, the Administrative Committee authorized GPO and the Office of the Federal Register (OFR) to develop online editions of the CFR and other **Federal Register** publications to provide the American public with greater access to essential Government information. The OFR/GPO partnership posted selected volumes of the 1996 CFR in October of 1996 to begin the pilot program. Beginning with the 1997 set, all annual CFR volumes are available on the GPO Access service.

The online edition of the CFR is produced from the same OFR/GPO publication database that is used to print the paper volumes. It includes text-only files (with notations to indicate where graphics are omitted) and Portable Document Format (PDF) files which produce page-for-page replicas of the printed volumes, including all graphics. The text-only files ensure that persons with visual disabilities have equal access to federal regulations.

The CFR is the official codification of federal regulations having general applicability and legal effect. Under the Federal Register Act (44 U.S.C. 1510), the CFR is prima facie evidence of the original documents filed with the OFR and published in the **Federal Register**, and the fact that they are in effect on and after the dates specified in the codification. The CFR, in the formats authorized by the Administrative Committee, is the only official codification of federal regulations. By amending its regulations to recognize the online CFR on GPO Access as one of three authorized publication formats, the Administrative Committee assures the public that it may fully rely on the online edition of the CFR on GPO Access as an official legal publication.

In 1997, the OFR/GPO partnership developed a pilot for an online edition of the Weekly Compilation of Presidential Documents. The Weekly Compilation is an official serial publication of Presidential documents. OFR editors review all material submitted for publication in the Weekly Compilation to assure the accuracy and integrity of the publication. The Weekly Compilation contains Presidential statements, memoranda, messages to Congress and federal agencies, speeches and other remarks released by the White House. Like the online CFR, the online edition of the Weekly Compilation includes text-only files and PDF files. The files begin with documents from January 1993 through the present. By amending its regulations to recognize the official status of the online Weekly Compilation of Presidential Documents on GPO Access, the Administrative Committee assures the public that it may rely on the online edition as an authoritative source of historical information.

Accordingly, this final rule revises 1 CFR 8.6 and 11.3 by listing the online CFR on GPO Access as one of the three official formats authorized by the Administrative Committee. Sections 10.3 and 11.6 are revised to include the online edition of the Weekly Compilation of Presidential Documents on GPO Access as an official **Federal Register** publication. The affected sections are also slightly reorganized to create shorter paragraphs and a more parallel structure consistent with plain language requirements.

The Administrative Committee's last price change regulation invited public comment on the pricing structure of **Federal Register** publications. The Administrative Committee did not receive any comments relating specifically to the prices of print publications. But several customers made suggestions for improving the user interfaces of the online publications to make them better alternatives to the printed publications. In response to those concerns, OFR and GPO developed browsing features for the online **Federal Register** and CFR to provide direct access to material through hypertext tables of contents, and GPO added more powerful servers.

Customers who need assistance or wish to submit suggestions for improving online **Federal Register** publications are referred to the GPO Access User Support Team. GPO provides information on free public access to the online editions of **Federal Register** publications on the GPO Access service via:

- Telephone at 202–512–1530, or toll free at 1–888–293–6498;
- Fax at 202–512–1262;
- Email at gpoaccess@gpo.gov;
- GPO's Federal Register World Wide Web site at http://www.access.gpo/nara, or see the National Archives and Records Administration's Federal Register Web site at: http://www.nara.gov/fedreg;
- Federal depository libraries (for the location of the nearest depository library, call the telephone numbers listed above or access the information online at http://www.access.gpo.gov/su__docs/libpro.html); and
- The daily paper edition of the **Federal Register** on introductory page II.

Regulatory Analysis

Administrative Procedure Act

The Administrative Committee has determined that publication of a proposed rule is unnecessary under the good cause exception of 5 U.S.C. 553(b)(B). The Administrative Committee must set the prices for **Federal Register** subscriptions and individual copies according to the funding mechanisms authorized under law for the Federal Register program. GPO is legally required to recover its production and distribution costs. The Administrative Committee has no discretion or means to subsidize the cost of its publications. The revised price schedule is based on an in-depth cost study conducted by GPO for the Administrative Committee, and only actual costs from prior years and conservative estimates of future costs were considered in setting these prices. Granting official status to the online editions of the CFR and the Weekly Compilation of Presidential Documents is a procedural matter. It is not a substantive rule that materially affects the rights or obligations of any person. For these reasons, the Administrative Committee has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking. The Administrative

Committee continues to welcome comments from interested persons on all matters related to this final rule.

Executive Order 12866

The final rule has been drafted in accordance with Executive Order 12866, section 1(b), ''Principles of Regulation.'' The Administrative Committee has determined that this final rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866. The rule has been submitted to the Office of Management and Budget under section 6(a)(3)(E) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to rate increases necessary to recover the costs to the Government of printing and distributing **Federal Register** publications. This rule will not have a significant impact on small entities since it imposes no requirements, and any increased costs can be avoided by accessing **Federal Register** publications through the free GPO Access service over the Internet or at a Federal depository library.

Federalism

This rule has no federalism implications under Executive Order 13132. It does not impose compliance costs on State or local governments or preempt State law.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this final rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects

1 CFR Part 8

Administrative practice and procedure, Code of Federal Regulations, Government publications.

1 CFR Part 10

Government publications, Presidential documents, Public Papers of the Presidents of the United States, Weekly Compilation of Presidential Documents.

1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Public Papers of the Presidents of the United States, United States Government Manual, Weekly Compilation of Presidential Documents.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register amends parts 8, 10 and 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 8—CODE OF FEDERAL REGULATIONS

1. The authority citation for part 8 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Revise § 8.6 to read as follows:

§ 8.6 Forms of publication.

(a) Under section 1506 of title 44, United States Code, the Administrative Committee authorizes publication of the Code of Federal Regulations in the following formats:

(1) Paper;
(2) Microfiche; and
(3) Online on GPO Access (44 US.C. 4101).

(b) The Director of the Federal Register is authorized to regulate the format of the Code of Federal Regulations according to the needs of users and compatibility with the facilities of the Government Printing Office. The Director may provide for the Code of Federal Regulations to be printed in as many separately bound books as necessary, set requirements for microfiche images, and oversee the organization and means of access to material in the online edition.

PART 10—PRESIDENTIAL PAPERS

1. The authority citation for part 10 is revised to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Revise § 10.3 to read as follows:

§ 10.3 Format, indexes, and ancillaries.

(a) The Administrative Committee publishes the paper edition of the Weekly Compilation of Presidential Documents in the binding and style it considers suitable for public and official use.

(b) The Administrative Committee publishes the online edition of the Weekly Compilation of Presidential Documents on GPO Access (44 U.S.C. 4101).

(c) The Weekly Compilation of Presidential Documents is appropriately indexed and contains ancillary information on Presidential activities and documents not carried in full text. In general, ancillary texts, notes and tables are derived from official sources.

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 is revised to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register**, including postage, is $638 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected), including postage, is $697 per year for the paper edition, or $253 per year for the microfiche edition. Six-month subscriptions to the paper and microfiche editions are also available at one-half the annual rate. Limited quantities of current or recent issues may be purchased for $9 per copy for the paper edition, or $2 per copy for the microfiche edition.

* * * * *

3. Revise § 11.3 to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations, including postage, is $1094 per year for the bound, paper edition, or $290 per year for the microfiche edition. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume of the microfiche edition is $2 per copy.

(b) The online edition of the Code of Federal Regulations, issued under the authority of the Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

4. Revise § 11.6 to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is $92 per year for delivery by non-priority mail, or $151 per year for delivery by first-class mail. The price of an individual copy is $4.

(b) The online edition of the Weekly Compilation of Presidential Documents, issued under the authority of the

Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is $28.

6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $31.

John W. Carlin,
Chairman.
Michael F. DiMario,
Member.
Rosemary Hart,
Member.
Janet Reno,
Attorney General.
John W. Carlin,
Archivist of the United States.

[FR Doc. 00–4214 Filed 2–22–00; 8:45 am]
BILLING CODE 1505–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–64–AD; Amendment 39–11592; AD 2000–04–10]

RIN 2120–AA64

Airworthiness Directives; Hoffmann Propeller Co. HO27( ) and HO4/27 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hoffmann Propeller Co. HO27( ) and HO4/27 series propellers. This action requires installing improved propeller mounting bolts to a higher torque value, operating the airplane for one flight, checking the torque, and retorquing, as required, to the correct torque value. This amendment is prompted by reports of insufficient torque of propeller mounting bolts due to operating conditions, loads, and environmental conditions such as humidity and temperature. The actions specified in this AD are intended to prevent propeller mounting bolt failure, which could result in propeller separation and loss of control of the airplane.

DATES: Effective March 9, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–64–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Budesamt (LBA), which is the airworthiness authority for Germany, notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Hoffmann Propeller Co. HO27( ) and HO4/27 series propellers. The LBA advises that they have received reports of insufficient torque of propeller mounting bolts due to poor maintenance and operating conditions, loads, and environmental conditions such as humidity and temperature. This condition, if not corrected, could result in propeller mounting bolt failure, which could result in propeller separation and loss of control of the airplane.

Bilateral Airworthiness Agreement

This propeller model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the proposed AD would require installing improved propeller mounting bolts to the correct torque value. This AD would require the installation within 10 hours time-in-service, or 7 days after the effective date of this AD, whichever occurs first. After operating the airplane for one flight, check the torque, and retorque to the correct torque value, as required. The LBA classified this action as mandatory and issued airworthiness directive (AD) 1998–322/2, dated August 6, 1998, in order to assure the airworthiness of these propellers in Germany.

Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–64–AD.'' The

postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) No. 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in airplane, and is not a ''significant regulatory action'' under Executive Order No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–10 Hoffmann Propeller Co.: Amendment 39–11592. Docket 98–ANE–64–AD.

Applicability: Hoffmann Propeller Co. HO27( ) and HO4/27 series propellers, with propeller mounting bolts, part number (P/N) FP20–147 ( ) ( ) ( ), installed. These propellers are installed on but not limited to Textron Lycoming O–360 series and O–540 series, and Teledyne Continental Motors O–470 series reciprocating engine powered airplanes manufactured by Aeronca, Bellanca, Cessna, DeHavilland, Piper, Socata, Rallye, Stinson, and Varga.

Note 1: The parentheses that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive (AD) is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller mounting bolt failure, which could result in propeller separation and loss of control of the airplane, accomplish the following:

Improved Propeller Mounting Bolts

(a) Within 10 hours time-in-service (TIS), or 7 days after the effective date of this AD, whichever occurs first, remove from service propeller mounting bolts, P/N FP20–147 ( )( )( ), and install improved propeller mounting bolts, P/N FP20–147 ( )( )( )V. Make sure the new bolts have the ''V'' marking at the end of the P/N.

Correct Torque

(b) Torque all six propeller mounting bolts to 24.3 to 25.8 foot-pounds or 33 to 35 Newton-meters.

Note 3: Further information on propeller mounting bolt installation and torquing procedures can be found in Hoffmann Propeller Company Owner Manuals E0110.74 or 0207.71, and on the sticker on the propeller.

Retorque After First Flight

(c) After installation of new mounting bolts, operate the airplane for no more than 2 hours TIS, check torque and retorque, as required, to 24.3 to 25.8 foot-pounds or 33 to 35 Newton-meters.

Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(e) This amendment becomes effective on March 9, 2000.

Issued in Burlington, Massachusetts, on February 14, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–4262 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–150–AD; Amendment 39–11584; AD 2000–04–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. This AD also requires eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, terminates the repetitive testing. This amendment is prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. The actions specified by this AD are intended to prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

DATES: Effective March 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 2, 1999 (64 FR 29602). That action proposed to require repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. That action also proposed to require eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, terminates the repetitive testing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Extend Compliance Time

Two commenters request that the proposed compliance time for replacement of the low pressure switches with higher low pressure switches be extended.

One commenter, the manufacturer, requests that the compliance time for installation of higher threshold switches on Model 737–200 series airplanes be extended from 2 to 3 years. The commenter states the vendor for the low pressure switches for Model 737–200 series airplanes had not committed to providing the required parts within the proposed 2-year compliance time. The commenter states that the pressure switch, unlike the one used on Model 737–300, –400, and –500 series airplanes, was previously used only on auxiliary fuel tank installations, and that production was in very low quantities. There are approximately 1,000 Model 737–200 series airplanes that would require the subject switch. The commenter also states that the vendor for the low pressure switches for Model 737–300, –400, and –500 is able to provide the needed hardware within the proposed compliance time.

Another commenter requests that airplanes with Argo-Tech/TRW boost pumps installed in the main tanks be allowed up to 4 years to install the higher threshold low pressure switches to accommodate parts replacement at heavy maintenance visits.

The FAA does not concur with the commenters' requests. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. Subsequent to closure of the comment period of the proposed AD, the FAA has confirmed with the manufacturer that an ample number of required parts will be available for accomplishment of the replacement within the proposed 2-year compliance time. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Follow Service Bulletin Threshold Time

One commenter, an operator, recommends that the compliance time for accomplishing the pump output pressure test follow the 180-day threshold recommended in Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998. The commenter states that the 180-day compliance time will not compromise safe operation of the airplane fuel feed system based upon results of their testing and the redundancy associated with the fuel system on Model 737 series airplanes.

The FAA does not concur with the commenter's request. As discussed in the preamble of the original NPRM (63 FR 42596, August 10, 1998), the FAA has determined that an interval of 180 days would not address the identified unsafe condition in a timely manner, as degraded fuel boost pump performance may go undetected. Degraded fuel boost pump performance that is not detected by the low pressure switch and annunciated on the flight deck could result in multi-engine suction feed operation without flight crew indication, and possible consequent multiple engine failure. Redundancy in the fuel system has not prevented a number of in-service engine failures associated with pumps operating in a degraded manner. Therefore, no change to the final rule is necessary.

Request To Limit the Applicability to Certain Fuel Pumps

One commenter requests that the applicability of the proposed AD be revised to only affect airplanes which are fitted with General Electric Company (GEC) boost pumps. The commenter points out that the Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998, reveals that the unsafe condition or flameout occurred on Model 737–300, –400, and –500 series airplanes equipped with GEC pumps. No case of flameout was reported on Model 737–100, or –200 series airplanes equipped with Pratt and Whitney Model JT8D engines. The commenter states that its request will in no way affect the safety of the airplane.

The FAA does not concur with the commenter's request. As discussed in the supplemental NPRM, the FAA has determined that all pump configurations on affected Boeing Model 737 series airplanes may be subject to the identified unsafe condition.

Explanation of Changes to Proposal

The FAA has revised paragraph (a)(4) of the final rule to clarify that accomplishment of the required replacement constitutes terminating action for paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,772 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,140 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2–8 work hours per airplane to accomplish the required testing for airplanes equipped with GEC pumps, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the testing required by this AD on U.S. operators is estimated to be $120–$480 per airplane, per testing cycle.

It will take approximately 4–6 work hours per airplane to accomplish the

required modification, at an average labor rate of $60 per work hour. Required parts will cost $1,900 [for airplanes equipped with part number (P/N) 60B92400–3 low pressure switches] or $2,700 (for airplanes equipped with P/N 10–3067–3 low pressure switches). Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $273,600–$410,400, or $2,140–$3,060 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–02 Boeing: Amendment 39–11584. Docket 98–NM–150–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line numbers 1 through 3002 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss, accomplish the following:

Requirements for Airplanes Equipped With GEC Boost Pumps:

(a) For airplanes equipped with one or more main tank fuel boost pumps manufactured by the General Electric Company (GEC), of the United Kingdom: Accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) As of the effective date of this AD, no airplane shall be dispatched with any main tank fuel boost pump inoperative unless the initial testing and any follow-on corrective actions required by paragraph (a)(2) of this AD have been accomplished on the operative pump in that main tank.

(2) Test each GEC-manufactured main tank fuel boost pump to determine the output pressure, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998; at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. If the fuel boost pump output pressure measured during the testing required by this paragraph is less than 23 pounds per square inch gauge (psig), as measured at the input to the engine fuel pump; or less than 36 psig, as measured at the fuel boost pump low pressure switch; prior to further flight, replace the fuel boost pump with a new or serviceable fuel pump, in accordance with the alert service bulletin.

(i) Prior to the accumulation of 3,000 total flight hours, or within 1 year since date of manufacture of the airplane, whichever occurs first; or

(ii) Within 90 days after the effective date of this AD.

(3) Repeat the testing required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 6 months, until accomplishment of the requirements of paragraph (a)(4) of this AD.

(4) Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998. Accomplishment of this replacement constitutes terminating action for the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Requirements for Airplanes Equipped With Non-GEC boost pumps:

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The tests and replacements shall be done in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 29, 2000.

Issued in Renton, Washington, on February 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3886 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–256–AD; Amendment 39–11587; AD 2000–04–05]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries Model Astra SPX series airplanes, that requires a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracks in the lower scissors fitting and fitting attachment bolts of the horizontal stabilizer, which could result in possible in-flight loss of the horizontal stabilizer and consequent reduced controllability of the airplane.

DATES: Effective March 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries Model Astra SPX series airplanes was published in the **Federal Register** on December 9, 1999 (64 FR 68959). That action proposed to require a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection to measure the countersink angle of the bolt holes, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $22,800, or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–05 Israel Aircraft Industries, Ltd.: Amendment 39–11587. Docket 99–NM–256–AD.

Applicability: Model Astra SPX series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the lower scissors fitting and fitting attachment bolts of the horizontal stabilizer, which could result in possible in-flight loss of the horizontal stabilizer and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 30 flight hours after the effective date of this AD, perform a detailed visual inspection of the bolt holes in the lower scissors fitting of the horizontal stabilizer to

measure the countersink angle, in accordance with Astra Alert Service Bulletin 1125–55A–192, Revision 1, dated June 1, 1999.

(1) If the measured angle of countersink is within the limits specified in the alert service bulletin, no further action is required by this AD.

(2) If the measured countersink angle is outside the limits specified in the alert service bulletin, prior to further flight, perform a detailed visual inspection of the fitting attachment bolts in the lower scissors fitting of the horizontal stabilizer to detect concave bolt heads, in accordance with the alert service bulletin.

(i) If no bolt head is found to be concave, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 50 flight hours; and, within 250 flight hours after the initial inspection required by paragraph (a) of this AD, rework all bolt holes and replace the existing bolts with new bolts in accordance with the Accomplishment Instructions of the alert service bulletin. Such rework constitutes terminating action for the repetitive inspections required by this paragraph.

(ii) If any bolt head is found to be concave, prior to further flight, rework all bolt holes and replace the existing bolts with new bolts, in accordance with the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Astra Alert Service Bulletin 1125–55A–192, Revision 1, dated June 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 55–99–04–02R2, dated August 4, 1999.

(e) This amendment becomes effective on March 29, 2000.

Issued in Renton, Washington, on February 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3887 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–10]

RIN 2120–AA66

Revocation of the El Toro Marine Corps Air Station (MCAS) Class C Airspace Area, and Revision of the Santa Ana Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the El Toro MCAS, CA, Class C airspace area and removes references to the El Toro MCAS Class C airspace area in the description of the Santa Ana, CA, Class C airspace area. The FAA is taking this action due to the closure of the El Toro MCAS air traffic control (ATC) facilities. This action does not change the dimensions, operating requirements, or flight paths of the current Santa Ana Class C airspace area.

EFFECTIVE DATE: 0601 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of the Base Realignment and Closure (BRAC) recommendations and decisions, effective July 2, 1999, the United States Marine Corps permanently terminated ATC service at the El Toro MCAS. On November 5, 1999 , the FAA published an NPRM (64 FR 60388) that proposed to revoke the El Toro MCAS, CA, Class C airspace area and remove references to the El Toro MCAS from the Santa Ana, CA, Class C airspace area description. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA.

Public Input

On November 5, 1999, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket 99–AWA–10; 64 FR 60388) proposing to revoke the El Toro MCAS Class C airspace area and revise the Santa Ana Class C airspace area, CA. The comment period for this NPRM closed on December 23, 1999.

No comments were received during the comment period. However, on January 31, 2000, one comment was received, objecting to the proposed revocation of the El Toro Class C airspace area, from the Orange County El Toro Local Redevelopment Authority (herein after referred to as ''The Authority'') on behalf of the County of Orange. The Authority requested that the FAA temporarily suspend the current Class C airspace area, due to ongoing planning activities to convert the former MCAS El Toro into a commercial airport, and continue to chart the area. The Authority is of the belief that by retaining the airspace as is, the need to re-chart the airspace for a proposed commercial airport and possible environmental studies by the FAA under the National Environmental Protection Agency (NEPA) would be eliminated. The commentor also stated it would be consistent with historical practice to maintain the regulatory airspace since the airspace in question was only effective during published hours.

The FAA does not agree with this commentor. It is FAA policy to work with local aviation interests to ascertain whether future changes should be considered to better accommodate all airspace users. The FAA establishes Class C airspace areas when it is determined that they will improve safety and enhance the management of aircraft operations. The FAA does not maintain regulatory airspace based on planning activities for proposed airports. If operations at the former MCAS meet the requirements for the establishment of regulatory airspace, the FAA would initiate rulemaking action to propose any required changes in the airspace area classification.

Further, the FAA does not necessarily agree that there will be a need for an environmental study of this airspace area. The FAA has determined that regulatory airspace areas established to improve safety and/or manage aircraft operations qualifies for categorical exclusion from environmental review in accordance with FAA Order 1050.1, Policies and Procedures for Considering Environmental Impacts.

The Rule

This action amends 14 CFR part 71 by revoking the Class C airspace area designated as the ''El Toro MCAS, CA'' Class C airspace area. The removal is necessary due to the closure of the ATC facilities at the El Toro MCAS and will revert the current Class C airspace to Class E controlled airspace. This action also revises the Santa Ana, CA, Class C airspace area, by removing references to the El Toro MCAS from the description. These actions merely revoke the Class C airspace area designation for the El Toro MCAS and revises the description for the Santa Ana, CA, Class C airspace area, but does not change the dimensions, operating requirements, or flight patterns in the Santa Ana, CA, area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace.

* * * * *

AWP CA C El Toro MCAS, CA [Removed]

* * * * *

AWP CA C Santa Ana, CA [Revised]

John Wayne Airport/Orange County, CA
(lat. 33°40′32″ N., long. 117°52′06″ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County excluding that airspace east of a line between lat. 33°44′12″ N., long. 117°48′00″ W.; and lat. 33°36′55″ N., long. 117°47′58″ W.; and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the John Wayne Airport/Orange County, west of a line from lat. 33°36′55″ N., long. 117°47′58″ W.; to lat. 33°31′09″ N., long. 117°47′56″ W. clockwise to the 175° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 1,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 175° bearing clockwise to the 201° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 3,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 201° bearing from the airport to the shoreline, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the shoreline to the San Diego Freeway (I–405), excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the San Diego Freeway clockwise to the 360° bearing from the John Wayne Airport/Orange County, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,000 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 360° bearing from the John Wayne Airport/Orange County clockwise to a line from lat. 33°49′58″ N., long. 117°48′02″ W.; to lat. 33°44′12″ N., long. 117°48′00″ W. This Class C airspace area is effective during the specific days and hours of operation of the Orange County Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC on February 15, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–4226 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities Act Native Hawaiian Program; Direct Grant Program

AGENCY: Department of Education.

ACTION: Notice of final waiver.

SUMMARY: The Secretary waives the requirements in Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.261 in order to extend the project period under the Safe and Drug-Free Schools and Communities Act (SDFSCA) Native Hawaiian Program, under title IV of the Elementary and Secondary Education Act of 1965, as amended (ESEA), from 48 months to up to 72 months. This action allows services under this program to continue uninterrupted and results in the awarding of up to two continuation awards for a total of up to 24 months to the existing grantee, using fiscal year (FY) 1999 and FY 2000 funds.

DATES: This waiver becomes effective February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Elayne McCarthy, U.S. Department of Education, 400 Maryland Avenue, SW,

Room 3E322, Washington, DC 20202–6123. Telephone: (202) 260–2831; FAX: (202) 260–7767.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In 1994, title I of the Improving America's Schools Act (IASA), Public Law 103–382, reauthorized the ESEA for a period of 5 years (1995–1999). The Safe and Drug-Free Schools and Communities Native Hawaiian Program is authorized by sections 4111(a)(4) and 4118 of the SDFSCA, which is title IV of ESEA. Section 4118(a) of the SDFSCA authorizes the Secretary to make grants to or enter into cooperative agreements or contracts with ''organizations primarily serving and representing Native Hawaiians which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of SDFSCA for the benefit of Native Hawaiians.'' Section 4118(b) of the SDFSCA defines the term ''Native Hawaiian'' as any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

In 1995 the Department held a competition under section 4118 of the SDFSCA among the eligible entities for the SDFSCA Native Hawaiian Program. As a result of that competition, the Secretary awarded a grant to one entity with FY 1995 funds for a project period of 48 months, based on the grant application. Since that time, the grantee for the SDFSCA Native Hawaiian Program under the SDFSCA has received continuation awards with funds from three subsequent fiscal years (FY 1996, FY 1997, and FY 1998). The grantee has received approximately $1 million per year.

As of the date of publication of this final notice, the ESEA has not been reauthorized, and the current authorization has been extended into FY 2000. This waiver allows the period of funding for the SDFSCA Native Hawaiian Program to be directly tied to the time period for reauthorization of the current ESEA, including SDFSCA. This waiver for the SDFSCA Native Hawaiian Program is in force only as long as the current SDFSCA is in effect and will terminate upon reauthorization of ESEA.

If the Department were to hold a new competition under the existing legislation in FY 2000 (using FY 1999 funds), the Department would only fund the project for a limited project period up to 24 months, in anticipation that the program statute would be reauthorized prior to FY 2001. It would take a new grantee much of this time to 'start up', given the scope and complexity of the services provided and the time it takes to hire qualified staff and develop plans and relationships that are responsive to the Native Hawaiian population in the Hawaiian islands. Holding such a competition would impose additional costs at the Federal level without a guarantee that the new grantee would be able to provide the technical assistance and services necessary to schools and communities serving the Native Hawaiian population, as the Department moves towards reauthorization of ESEA. Therefore, in the best interest of the Federal Government, the Assistant Secretary extends the current project for up to two additional years and waives the regulation at 34 CFR 75.261, which permits extensions of projects only at no cost to the Federal Government. This action is consistent with the President's mandate to implement cost-effective, cost-saving initiatives.

On October 6, 1999, the Secretary published a notice of proposed waiver (64FR 54254–54255) for the Safe and Drug-Free Schools and Communities Act Native Hawaiian Program. In the notice of proposed waiver the Secretary invited public comments. The Secretary received one comment that did not propose a substantive change, and therefore is not addressed in this final notice of waiver.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7111(a)(4); 20 U.S.C. 7118.

Waiver of Delayed Effective Date

The Secretary waives the delayed effective date under 5 U.S.C. 553(d) as unnecessary and contrary to the public interest. This notice extends the grant period for the current SDFSCA Native Hawaiian Program grantee to ensure continuation of services while the current SDFSCA is in force. It will terminate upon reauthorization of ESEA. A delayed effective date would serve no useful purpose.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Catalog of Federal Domestic Assistance Number 84.186C.

Dated: February 17, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–4260 Filed 2–22–00; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN118–1a; FRL–6538–5]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter (PM) emissions regulations for Indianapolis Power and Light Company (IPL) in Marion County, Indiana, which were submitted by the Indiana Department of Environmental Management (IDEM) on November 22, 1999, as amendments to its State Implementation Plan (SIP). The revisions include relaxation of some PM limits, tightening of other limits, and the elimination of limits for several boilers

which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and correction of a typographical error in one limit. This SIP revision results in an overall decrease in allowed PM emissions of 52.54 tons per year (tpy).

DATES: This rule is effective on April 24, 2000, unless EPA receives relevant adverse written comments by March 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. What is the EPA Approving?

We are approving revisions to PM emissions regulations for IPL in Marion County, Indiana, which were submitted by the IDEM on November 22, 1999, as amendments to its SIP. The revisions apply to 3 generating stations located in Indianapolis: Perry K, Perry W (demolished), and E. W. Stout. The revisions include relaxation of some PM limits, tightening of other limits, and the elimination of limits for several boilers which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and the correction of a typographical error in one limit. The submitted revisions are contained in Title 326 Indiana Administrative Code, Article 6, Rule 1, Section 12 (326 IAC 6–1–12).

II. What are the Changes From Current Rules?

A. Sources eliminated from the rules

Indiana has eliminated from rule 326 IAC 6–1–12 boilers 17 and 18 at IPL's Perry W generating station, and boilers 1 through 8 at IPL's E. W. Stout generating station. The annual PM emission limits for these eliminated sources totaled 52.54 tons per year.

B. Revised Limits

Indiana has revised some short-term PM emissions limits for sources at IPL's Perry K generating station. Indiana has decreased the PM emissions limits for boilers 17 and 18 from 0.082 pounds per million British Thermal Units (lb/MMBTU) each to 0.015 lb/MMBTU each. Indiana has increased the PM emissions limits for boilers 15 and 16 from 0.082 lb/MMBTU each to 0.106 lb/MMBTU each. Indiana has increased the PM emissions limit for boiler 12 from 0.125 lb/MMBTU to 0.175 lb/MMBTU.

C. Combined Annual Limits

Indiana combined the annual emissions limits for boilers 11 through 18 at IPL's Perry K generating station into one overall limit. The previous version of the rule contained limits of 302.2 tpy for boilers 11 and 12 combined, 135.4 tpy for boilers 13 and 14 combined, and 46.8 tpy for boilers 15, 16, 17, and 18 combined. The revised rule contains one PM limit of 484.4 tpy for boilers 11 through 18 combined.

D. Typographical Error

Indiana promulgated the annual PM emission limit for Boiler 70 at IPL's E.W. Stout generating station as 830.7 tpy in 1981. However, this limit was printed in the November 1, 1981 Indiana Register (4 IR 2386) as 0.38 tpy. This SIP revision corrects this typographical error.

III. Analysis of supporting materials provided by Indiana

The general criteria used by the EPA to evaluate such emissions trades, or ''bubbles'', under the Clean Air Act and applicable regulations are set out in the EPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades such as IPL's, which result in an overall decrease in allowable emissions, require a ''Level II'' modeling analysis under the ETPS to ensure that the NAAQS will be protected. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels. For PM, the significance levels are 10 micrograms per cubic meter ($\mu g/m^3$) for any 24-hour period, and 5 $\mu g/m^3$ for any annual period.

The modeling analysis submitted by the IDEM in support of the requested IPL SIP revision is consistent with a Level II analysis. The analysis shows that the SIP revision will not cause or contribute to any exceedances of the PM NAAQS. The maximum modeled PM air quality impacts were 4.3 $\mu g/m^3$ in 24-hours, and 0.1 $\mu g/m^3$ on an annual basis. Therefore, IDEM has demonstrated that this SIP revision will not have a significant impact on air quality.

IV. What are the environmental effects of this action?

This SIP revision will result in a decrease in allowable PM emissions of 52.54 tons per year. In addition, an air quality modeling analysis conducted by IDEM shows that the maximum daily and annual impacts of this SIP revision are well below established significance levels. Therefore, this SIP revision will not have an adverse effect on PM air quality.

V. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to PM emissions regulations for IPL in Marion County, Indiana. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by

March 24, 2000. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on April 24, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is

not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 4, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(133) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(133) On November 22, 1999, Indiana submitted revised particulate matter emissions regulations for Indianapolis Power and Light Company in Marion County, Indiana. The submittal amends 326 IAC 6–1–12, and includes relaxation of some PM limits, tightening of other limits, and the elimination of limits for several boilers which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and correction of a typographical error in one limit.

(i) Incorporation by reference. Emissions limits for Indianapolis Power and Light in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County, subsection (a). Added at 22 In. Reg. 2857. Effective May 27, 1999.

[FR Doc. 00–4045 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN–227–1–200001a; FRL–6539–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants Tennessee: Approval of 111(d) Plan for Municipal Solid Waste Landfills in Knox County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the section 111(d) Plan for Knox County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (DEC) on July 29, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. The Plan meets all requirements applicable to such plans.

DATES: This direct final rule is effective April 24, 2000 without further notice, unless EPA receives adverse comment by March 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Knox County Department of Air Quality Management, City/County Building, Room 339, 400 Main Street, Knoxville, Tennessee, 37902–2405. 423/215–2488.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030 (email: humphris.allison@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through

60.759). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA was involved in litigation over the requirements of the MSW landfill EG and NSPS beginning in the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et. al.*, No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR 60898. It is important to note that the settlement did not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The Knox County Department of Air Quality Management (DAQM) has amended their rules for MSW landfills in Section 40.0, Subsection 40.2, Item UUU (effective date of July 21, 1999), to reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the State of Tennessee for the Knox County, Tennessee, DAQM to implement and enforce subpart Cc.

II. Analysis of State's Submittal

The State of Tennessee, on behalf of Knox County DAQM, submitted to EPA on July 29, 1999, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in Knox County, Tennessee: Enforceable Mechanisms; Legal Authority; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; MSW Landfill Source and Emission Inventory; Test Methods and Procedures; Source Surveillance, Compliance Assurance, and Enforcement; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable State of Tennessee statutes and rules and ordinances of the Knox County DAQM.

The approval of the Knox County DAQM Plan is based on finding that: (1) The Knox County DAQM provided adequate public notice of public hearings for the proposed rulemaking which allows the Knox County DAQM to implement and enforce the EG for MSW landfills; and (2) the Knox County DAQM also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the Plan submittal, the Knox County DAQM cites the following references for the legal authority: the State of Tennessee Air Quality Act (Tennessee Coda Annotated 68–210–115, ''Local Pollution Control Programs''); Knox County Ordinance No. 0–90–9–115; and the Tennessee Certificate of Exemption for Knox County. On the basis of these statutes and rules for Tennessee and Knox County, the Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In the Plan submittal, the Knox County DAQM cites the enforceable mechanism for implementing the EG for existing MSW landfills. The enforceable mechanisms are the regulations adopted by the Knox County DAQM in section 40.0, subsection 40.2, item UUU, ''Municipal Solid Waste Landfills.'' The County's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the Knox County DAQM cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in item UUU are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the Knox County DAQM included a source and emission inventory of all designated pollutants for each MSW landfill in Knox County. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

The Plan submittal describes the process the Knox County DAQM will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the Knox County DAQM cites the compliance schedule adopted in Item UUU for each existing MSW landfill to be in compliance by December 12, 1997. These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Knox County DAQM Plan submittal includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The Knox County DAQM also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The State of Tennessee, on behalf of Knox County DAQM, submitted regulations to support the requirements of monitoring, recordkeeping, reporting, and

compliance assurance in the Plan submittal. These Knox County rules in Item UUU have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Plan submittal outlines how the Knox County DAQM will provide progress reports of Plan implementation to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the Knox County DAQM Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State of Tennessee, on behalf of Knox County DAQM, did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

EPA is approving the Knox County DAQM section 111(d) Plan, submitted by the State of Tennessee on July 29, 1999, for implementing and enforcing the EG applicable to existing MSW landfills, except for those existing MSW landfills located in Indian Country. MSW landfills located in other Tennessee counties are addressed in separate rulemakings. As provided by 40 CFR 60.28(c), any revisions to the State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 24, 2000 without further notice unless the Agency receives adverse comments by March 24, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 24, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. . This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: February 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 62 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42.U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 62.10626, is amended by adding paragraph (b)(4) to read as follows:

§ 62.10626 Identification of plan.

* * * * *

(b) * * *

(4) Knox County Department of Air Quality Management Implementation Plan: Federal Emission Guidelines Municipal Solid Waste Landfills, submitted on July 29, 1999, by the State of Tennessee Department of Environment and Conservation.

* * * * *

[FR Doc. 00–4041 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN–219–2–200008a; FRL–6539–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Tennessee: Approval of 111(d) Plan for Municipal Solid Waste Landfills in Chattanooga-Hamilton County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the section 111(d) Plan for Chattanooga-Hamilton County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (DEC) on April 26, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. The Plan meets all requirements applicable to such plans.

DATES: This direct final rule is effective April 24, 2000 without further notice, unless EPA receives adverse comment by March 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554. Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee, 37407–2495. 423/867–4321.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030 (email address: humphris.allison@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B. On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA was involved in litigation over the requirements of the MSW landfill EG and NSPS beginning in the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et.al,* No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR 60898. It is important to note that the settlement did not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The Chattanooga-Hamilton County Air Pollution Control Bureau (APCB) has amended their rules for MSW landfills in the Chattanooga City Code, Part II, Section 4–41, Rule 15.3 (effective date of October 21, 1998), to

reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the State of Tennessee for the Chattanooga-Hamilton County APCB to implement and enforce subpart Cc.

II. Analysis of State's Submittal

The State of Tennessee, on behalf of the Chattanooga-Hamilton County APCB, submitted to EPA on April 26, 1999, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in Chattanooga-Hamilton County, Tennessee: Enforceable Mechanisms; Legal Authority; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; MSW Landfill Source and Emission Inventory; Test Methods and Procedures; Source Surveillance, Compliance Assurance, and Enforcement; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable statutes and rules of the State of Tennessee and ordinances of the Chattanooga-Hamilton County APCB.

The approval of the Chattanooga-Hamilton County APCB Plan is based on finding that: (1) the Chattanooga-Hamilton County APCB provided adequate public notice of public hearings for the proposed rulemaking which allows the Chattanooga-Hamilton County APCB to implement and enforce the EG for MSW landfills; and (2) the Chattanooga-Hamilton County APCB also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the Plan submittal, the Chattanooga-Hamilton County APCB cites the following references for the legal authority: the State of Tennessee Air Quality Act (Tennessee Code Annotated 68–210–115, ''Local Pollution Control Programs''); Chattanooga-Hamilton County Ordinance No. 10786; and the Tennessee Certificate of Exemption for Chattanooga-Hamilton County. On the basis of these statutes and rules for Tennessee and Chattanooga-Hamilton County, the Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In the Plan submittal, the Chattanooga-Hamilton County APCB cites the enforceable mechanism for implementing the EG for existing MSW landfills. The enforceable mechanisms are the regulations adopted by the Chattanooga-Hamilton County APCB in the Chattanooga City Code, Part II, Chapter 4, Section 4–41, Rule 15.3, ''Emissions Standards for Municipal Solid Waste Landfills.'' The County's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal, the Chattanooga-Hamilton County APCB cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in Rule 15.3 are approved as being at least as protective as the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal, the Chattanooga-Hamilton County APCB included a source and emission inventory of all designated pollutants for each MSW landfill in Chattanooga-Hamilton County. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

The Plan submittal describes the process the Chattanooga-Hamilton County APCB will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal, the Chattanooga-Hamilton County APCB cites the compliance schedule adopted in Rule 15.3 for each existing MSW landfill to be in compliance by December 12, 1997. These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Chattanooga-Hamilton County APCB Plan submittal includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable the agency to judge the compliance status of the facilities. The Chattanooga-Hamilton County APCB also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The State of Tennessee, on behalf of the Chattanooga-Hamilton County APCB, submitted regulations to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance in the Plan submittal. These Chattanooga-Hamilton County regulations in Rule 15.3 have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Plan submittal outlines how the Chattanooga-Hamilton County APCB will provide progress reports of Plan implementation to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the Chattanooga-Hamilton County APCB Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State of Tennessee, on behalf of Chattanooga-Hamilton County APCB, did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

EPA is approving the Chattanooga-Hamilton County APCB section 111(d) Plan, submitted by the State of Tennessee on April 26, 1999, for implementing and enforcing the EG applicable to existing MSW landfills, except for those existing MSW landfills located in Indian Country. MSW landfills located in other Tennessee counties are addressed in separate rulemakings. As provided by 40 CFR 60.28(c), any revisions to the State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 24, 2000 without further notice unless the Agency receives adverse comments by March 24, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 24, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: February 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 62 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42.U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 62.10626, is amended by adding paragraph (b)(5) to read as follows:

§ 62.10626 Identification of plan.

* * * * *

(b) * * *

(5) Chattanooga-Hamilton County Air Pollution Control Bureau Clean Air Act Section 111(d) Plan for Municipal Solid Waste Landfills, submitted on April 26, 1999, by the State of Tennessee Department of Environment and Conservation.

* * * * *

[FR Doc. 00–4043 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300968; FRL–6490–3]

RIN 2070–AB78

Furilazole; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the inert ingredient (herbicide safener)

3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine, which is also known as furilazole (CAS Reg. No.121776–33–8) in or on corn commodities, (grain, forage, and stover), at 0.01 ppm. Monsanto Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked on February 25, 2002.

DATES: This regulation is effective February 23, 2000. Objections and requests for hearings, identified by docket control number OPP–300968, must be received by EPA on or before April 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300968 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–6379; and e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300968. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

Time-limited tolerances for 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (furilazole) in or on corn commodities, (grain, fodder, and forage), at 0.01 ppm were previously established as requested by Monsanto Company under the Federal Food, Drug, and Cosmetic Act in a pesticide tolerance rule dated May 10, 1994 (59 FR 24059) (FRL–4777–2). These tolerances expired on June 30, 1996.

In the **Federal Register** of October 20, 1999, (64 FR 56502–56505) (FRL–6386–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E4031) for tolerance by Monsanto Company, Suite 1100, 700 14th Street NW., Washington, DC 20005. This notice included a summary of the petition prepared by Monsanto, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.471 be amended to establish again tolerances for residues of the inert ingredient (herbicide safener) (3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine), which is also known as furilazole in or on the following corn commodities: (fodder, forage and grain) at 0.01 parts per million (ppm). The tolerances will expire on February 25, 2002.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of furilazole on corn commodities (grain, forage, and stover) at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by furilazole are discussed in this unit.

1. *Acute toxicity*. Six acute toxicity studies were conducted and the results are summarized as follows:

i. *Oral*. In the acute oral toxicity study for rats, the LD_{50} was equal to 521 mg/kg in males and was classified as Toxicity Category III.

ii. *Dermal*. In the acute dermal toxicity study for rats, the LD_{50} was equal to >5,000 mg/kg and was classified as Toxicity Category IV.

iii. *Inhalation*. In the acute inhalation, toxicity study for rats, the LC_{50} was equal to >2.3 mg/L and was classified as Toxicity Category IV.

iv. *Primary eye irritation*. In a primary eye irritation study in rabbits, furilazole was found to be a mild irritant and is classified as Toxicity Category III.

v. *Primary skin irritation*. In a primary skin irritation study in rabbits, furilazole was found to be a negligible irritant and is classified as Toxicity Category IV.

vi. *Dermal sensitization*. In a dermal sensitization study furilazole was not a sensitizer.

2. *Subchronic and chronic toxicity*. This section summarizes the results of subchronic, and chronic toxicity studies in animals.

i. *Subchronic toxicity*. In a 3-month rat feeding study, the no observed adverse effect level (NOAEL) is 100 ppm (7 mg/kg/day for males and females) and the lowest observed adverse effect level (LOAEL) is 500 ppm (34 mg/kg/day for males and 38 mg/kg/day for females) based on the increased absolute liver weight in males, increased liver-to-body weight ratio in males and females, and increased levels of gamma glutamyltransferase in females.

In a 90–day dog study, the NOAEL is 5 mg/kg/day. The LOAEL for this study is 15 mg/kg/day based on bile duct inflammation in one female and decreased body weight gain in females.

In a 21–day dermal toxicity study, the NOAEL for systemic effects in both sexes is ≥ 1,000 mg/kg, the limit dose. A LOAEL was not established.

ii. *Chronic toxicity*. In a 2–year rat feeding chronic toxicity/carcinogenicity study, the NOAEL for chronic toxicity is 5 ppm (0.26 mg/kg/day) for males and 100 ppm (6.03 mg/kg/day) for females. The LOAEL is 100 ppm (5.05 mg/kg/day) for males based on significantly increased absolute and/or relative liver and kidney weights. The LOAEL is 1,000 ppm (61 mg/kg/day) for females based on significantly increased absolute and/or relative liver and kidney weight, kidney nephropathy, increased GGT, decreased body weight gain, and a moderate increase in non-neoplastic liver lesions (eosinophilic focus, cystic degeneration, and telangiectasis). Under the conditions of this study, furilazole appeared to be carcinogenic in both sexes.

In an 18–month mouse dietary carcinogenicity study, the NOAEL for systemic toxicity is 40 ppm (5.9 mg/kg/day) for males and 400 ppm (92.0 mg/kg/day) for females. The systemic toxicity LOAEL in males is 400 ppm (60.2 mg/kg/day) based on increased incidence of mortality and elevated alanine aminotransferase. The systemic toxicity LOAEL in females was 1,250 ppm (289.5 mg/kg/day), based on increased liver weight, increased incidence of hepatocellular hypertrophy of the panlobular area, and chronic inflammation of the lungs. At the doses tested, there was a treatment-related increase in tumor incidence.

3. *Developmental toxicity*. In a developmental toxicity study in rats, the maternal toxicity NOAEL is 10 mg/kg/day and the maternal toxicity LOAEL is 75 mg/kg/day based on increased liver weight. The developmental toxicity NOAEL is 10 mg/kg/day and the developmental LOAEL is 75 mg/kg/day based on increased number of resorptions.

4. *Reproductive toxicity*. In a two–generation reproduction study in rats, the NOAEL for systemic toxicity is 150 ppm (8.97 mg/kg/day in males and 10.67 mg/kg/day in females). The LOAEL for systemic toxicity is 1,500 ppm (92.39 mg/kg/day in males and 106.42 mg/kg/day in females) based on decreased body weight gains in the adults and offspring of both generations and microscopic lesions of the liver in F_0 and F_1 males and females and kidneys of F_0 females and F_1 males and females. The NOAEL for reproductive toxicity is ≥ 1,500 ppm (≥ 92.39 mg/kg/day in males and ≥ 106.42 mg/kg/day, in females), the highest dose tested. The reproductive toxicity LOAEL was not determined.

5. *Mutagenicity*. Furilazole induced a weak positive response for inducing reverse gene mutations at high precipitating doses in *Salmonella typhimurium* but was negative in cultured mammalian cells. Furilazole was also negative for the induction of micronuclei in the bone marrow cells of mice and negative for the induction of unscheduled DNA synthesis (UDS) in rat primary hepatocytes.

B. Toxicological Endpoints

1. *Acute dietary toxicity*. For an acute dietary risk assessment, for females ages 13–50 years, the Agency selected a developmental toxicity NOAEL of 10 mg/kg/day from a developmental toxicity study in rats. The developmental toxicity LOAEL of 75 mg/kg/day for this developmental study was based on increased resorptions.

For an acute dietary risk assessment for the general population including infants and children, the Agency selected a maternal toxicity NOAEL of 75 mg/kg/day from a developmental toxicity study in the rat. The maternal toxicity LOAEL of 175 mg/kg/day for this study was based on decreased maternal body weight.

2. *Dermal toxicity*. For a short-term dermal risk assessment, the Agency selected a NOAEL of 10 mg/kg/day from a developmental toxicity study in rats. The LOAEL of 75 mg/kg/day for this study was based on increased resorptions. Since an oral NOAEL was selected for dermal risk assessment a dermal absorption factor (30%) was used.

For an intermediate-term dermal risk assessment the Agency selected a NOAEL of 7 mg/kg/day from a 90–day feeding study in rats. The LOAEL of 34 mg/kg/day for males and 38 mg/kg/day for females for this study was based on increased absolute liver weights in males, increased liver-to-body weight ratio in males and females, and increased gamma glutamyltransferase in females. Since an oral NOAEL was selected for dermal risk assessment a dermal absorption factor (30%) was used.

A long-term dermal exposure scenario is not required for this use since furilazole is applied once per year.

3. *Chronic dietary toxicity*. For a chronic dietary risk assessment, the Agency selected a NOAEL of 0.26 mg/kg/day from the chronic toxicity/carcinogenicity study in rats. The LOAEL of 5.05 mg/kg/day was based on significantly increased absolute and/or relative liver and kidney weights in males.

4. *Carcinogenicity*. EPA has classified furilazole as ''likely to be carcinogenic to humans'' by the oral route in accordance with the EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996), based on multiple tumors seen at multiple sites in two species including both benign and malignant liver tumors in male and female rat and mice, rare tumors such as stomach and testicular tumors in male rats, and lung tumors in both sexes of mice. A Q_1* was calculated to be 8.22×10^{-2} $(mg/kg/day)^{-1}$ based on male mouse bronchiolar-alveolar adenoma and/or carcinoma combined tumor rates.

5. *Inhalation toxicity*. For a short-term inhalation risk assessment the Agency selected an oral NOAEL of 10 mg/kg/day from the developmental toxicity study in rats. The LOAEL of 75 mg/kg/day was based on increased resorptions.

For the intermediate-term risk assessment, the Agency selected a NOAEL of 7 mg/kg/day from a 90 day feeding study in rats as the endpoint. The LOAEL of 34 mg/kg/day for males and 38 mg/kg/day for females for this study was based on increased absolute liver weights in males, increased liver-to-body weight ratio in males and females, and increased gamma glutamyltransferase in females.

A long-term inhalation exposure scenario is not required for this use, since furilazole is applied once per year.

6. *Dermal penetration*. A dermal absorption factor of 30% was extrapolated by the Agency from a developmental toxicity study and a 21–day dermal toxicity study both in the rat, where effects on liver weights were seen by both routes of exposure. In the developmental toxicity study in the rat, increased liver weight was seen at the maternal toxicity LOAEL of 75 mg/kg/day. In the 21–day dermal toxicity study in the rat, adaptive effects on liver weights were seen at 250 mg/kg/day and are indicative of absorption. The Agency determined a dermal absorption ratio of 75/250 or 30%.

7. *Safety (uncertainty) factors, including FQPA safety factor*. The Agency will use the above NOAELs and LOAELs to assess the risks of using furilazole to the general population and certain subgroups of the general population. However, the Agency first modifies these values numerically, downward, by dividing the NOAEL by two or more safety factors. The standard safety (uncertainty) factors used are: a tenfold factor to account for intraspecies variability (the differences in how the test animals reacted to the test substance), and a tenfold factor to account for interspecies variation (the use of animal studies to predict human risk).

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. As noted, the Agency has used an additional 10–fold safety factor for the acute dietary assessment for females 13–50 only.

The basis for this conclusion is that in the rat development toxicity study, although the NOAELs and LOAELs for maternal and developmental toxicity were the same, there does appear to be an increased severity of developmental effects in comparison to maternal effects. Increased resorptions (or death of fetuses) seen at the LOAEL is a more severe effect than increased maternal liver weight seen at the same level. Additionally, the database is incomplete since there is a data gap for a developmental toxicity study in rabbits.

i. *Acute dietary toxicity (females 13–50)*. For an acute dietary risk assessment for females ages 13–50 years old the Agency divided the NOAEL of 10 mg/kg/day from a developmental toxicity study in the rat by an uncertainty factor of 1,000 (10x for interspecies difference, 10x for intraspecies variations, and 10x safety factor to address additional susceptibility in fetus and data gaps). The acute Population Adjusted Dose (aPAD) is 0.010 mg/kg/day.

ii. *Acute dietary toxicity (general population and infants and children)*. For an acute dietary risk assessment (general population and infants and children) the Agency divided the NOAEL of 75 mg/kg/day from the developmental rat study by an uncertainty factor of 100 (10x for interspecies difference, 10x for intraspecies variations and 1x for FQPA safety factor). The aPAD is 0.75 mg /kg/day

iii. *Chronic toxicity*. For a chronic dietary risk assessment the Agency divided the NOAEL of 0.26 mg/kg/day from a 2–year combined chronic toxicity/carcinogenicity study in the rat by an uncertainty factor of 300 (10x for interspecies differences, 10x for intraspecies variations and 3x for lack of chronic toxicity study in the dog and 1x for FQPA safety factor). The chronic Population Adjusted Dose (cPAD) is 0.0009 mg/kg/day.

C. Exposures and Risks

1. *From food and feed uses*. Time-limited tolerances were previously established (40 CFR 180.471) for the residues of furilazole, in or on corn commodities (grain, forage, and fodder) at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures from furilazole as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary risk assessment was performed for furilazole. The acute dietary analysis for furilazole is a conservative estimate of dietary exposure from food, or Tier 1 assessment, with the use of tolerance level residues for all corn commodities at 0.01 ppm, and 100 percent crop treated (PCT) information. The Agency's level of concern is for acute dietary exposures greater than 100% aPAD. The acute dietary exposure analysis was performed for the U.S. population and 26 subgroups. Acute estimates of the per capita dietary exposures from food at the 95th percentile for the U.S. population and all subgroups are <1% aPAD which is less than the Agency's level of concern.

ii. *Chronic exposure and risk*. A chronic dietary risk assessment was performed for furilazole. The chronic dietary analysis for furilazole is a refined estimate, or Tier 3 assessment, with the use of anticipated residues (ARs) (calculated from field trial data using half the level of quantitation) for all commodities and PCT information. EPA's level of concern is for chronic dietary exposures greater than 100% cPAD. For the U.S. population and all subgroups, including infants and children, <1% of the cPAD is occupied by dietary (food) exposure. The results of this analysis indicate that the estimated chronic dietary risk associated with the use of furilazole on corn is below EPA's level of concern.

iii. *Carcinogenic exposure and risk*. A cancer dietary risk assessment was performed. ARs and PCT were used to calculate the upper bound lifetime risk for dietary exposure to furilazole. EPA generally considers 1×10^{-6} as negligible risk (i.e, less than 1 in 1 million) for cancer. The results of this analysis indicate that the cancer dietary risk of 7.2×10^{-8} associated with the use of furilazole on corn is below the Agency's level of concern.

iv. *Use of anticipated residues and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: For the acute dietary risk assessment, the Agency assumed 100% crop treated i.e, that the entire crop was treated. For chronic (non-cancer and cancer) dietary analyses it was assumed that 25% of the corn was treated.

For assessing chronic dietary risk, the Agency believes that the three conditions listed above have been met. With respect to Condition 1, it was assumed that 25% of the corn was treated. The petitioner supplied the percent crop treated data to the Agency. The information was based on the amount of acetochlor since furilazole is used as a safener with acetochlor to treat corn. The Agency reviewed the estimate and found it to be reasonable. The Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which furilazole may be applied in a particular area.

2. *From drinking water*—

i. *Chemical specific information.* Based on laboratory data, furilazole and its principal degradates show low to moderate persistence and high mobility. Furilazole is stable against simple hydrolysis. Photolysis and soil metabolism are its main routes of transformation. ''Half-lives' for parent in the laboratory vary from 8 days to 95 days. Furilazole is likely to be highly mobile. Bioconcentration is not expected. Major degradates identified included N (dichloroacetyl) glycine, furilazole oxazolidine acid, and furilazole oxamic acid. These degradates could be produced in soil and natural waters.

ii. *Ground water.* The Agency used its SCI-GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the estimated environmental concentrations (EECs) of furilazole in ground water. SCI-GROW is an empirical model based upon actual ground water monitoring data collected for the registration of a number of pesticides that serve as benchmarks for the model. The current version of SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sandy soils and depth to ground water of 10 to 20 feet). The SCI-GROW ground water screening concentration is 0.019 ppb.

iii. *Surface water.* The Agency used its PRZM (Pesticide Root Zone Model)/EXAMS (Exposure Analysis Modeling System) screening model and environmental fate data to determine the EECs of furilazole in surface water. PRZM/EXAMS simulates a 1 hectare by 2 meter deep edge-of-the-field farm pond which receives pesticide runoff from a treated 10 hectare field. PRZM/EXAMS can overestimate true pesticide concentrations in drinking water. It has certain limitations and is not the ideal tool for use in drinking water risk assessments. However, it can be used in screening calculations and does provide an upper bound on the concentration of pesticide that can be found in drinking water.

Using the PRZM/EXAMS model and available environmental fate data, EPA calculated the following Tier 2 EECs for furilazole:

Acute (Peak) EEC: 1.007 ppb

Mean (chronic) EEC: 0.214 ppb

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, body weights, and pesticide uses. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential dietary exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water.

It is current Agency policy that the following subpopulations be addressed when calculating drinking water levels of comparison U.S. population (48 States), any other adult populations whose %PAD is greater than that of the U.S. population, and the Female and Infant/Children subgroups (1 each) with the highest food exposure. The subgroups which are listed below are those which fall into these categories.

iv. *Acute exposure and risk.* Based on the acute dietary exposure estimates from food, acute drinking water levels of comparison for furilazole were calculated to be 26,250 ppb for the U.S. population, 26,250 ppb for Non-Hispanic Blacks, 7,500 ppb for non-nursing infants (<1 year), and 300 ppb for Females (13–19 yrs/np/nn).

v. *Chronic (non-cancer) exposure and risk.* Based on the chronic dietary exposure estimates from food, chronic drinking water levels of comparison for furilazole were calculated, and are summarized below:

U.S. population (48 States): 31 ppb

Females 13–50 years: 27 ppb

Children (non nursing infants): 9 ppb

vi. *Carcinogenic exposure and risk.* Based on the carcinogenic dietary

exposure estimates from food, a carcinogenic drinking water level of comparison for furilazole in water was calculated to be 0.36 ppb for the U.S. Population (48 States).

vii. *Drinking water risks.* The modeled groundwater and surface water concentrations are less than the DWLOCs for furilazole in drinking water for acute, chronic (non-cancer) and cancer aggregate exposures. Thus, the Agency is able to screen out furilazole drinking water risks.

3. *From non-dietary exposure.* There are no currently registered residential uses for furilazole. Therefore a non-dietary assessment was not performed.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether furilazole (3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine) has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Furilazole is structurally related to chloroacetanilides such as alachlor and acetochlor. However at this time the Agency has not yet made a final decision concerning a possible common mechanism of toxicity for the chloroacetanilides. For the purposes of this tolerance action, therefore, EPA has not assumed that furilazole has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the U.S. population and all subgroups, including infants and children, < 1% of the aPAD is occupied by exposure through food, which is below EPA's level of concern of 100%. The estimated acute concentrations of furilazole in surface and ground water are less than EPA's levels of comparison for furilazole in drinking water. Therefore, EPA does not expect the aggregate risk to exceed 100% of the aPAD.

2. *Chronic (non-cancer) risk.* Since there are no residential uses for furilazole, the chronic (non-cancer) aggregate exposure includes only food and water. For the U.S. population and all subgroups, including infants and children, < 1% of the cPAD is occupied by exposure through food which is below EPA's level of concern of 100%. The estimated average concentrations of furilazole in surface and ground water are less than EPA's levels of comparison for furilazole in drinking water. Therefore, EPA does not expect the aggregate risk to exceed 100% of the cPAD.

3. *Short-and intermediate-term risk.* Short-and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are no residential uses or exposure scenarios, short, intermediate, and long-term aggregate risk assessments were not conducted.

4. *Aggregate cancer risk for U.S. population.* For the U.S. population, the cancer dietary risk from food of 7.2×10^{-8} from food exposure is below the Agency's level of concern for excess lifetime cancer risk. The estimated average concentrations of furilazole in surface and ground water are less than EPA's drinking water level of comparison for furilazole in drinking water. Therefore, EPA does not expect aggregate risk to exceed 1×10^{-6} as negligible risk (i.e., less than 1 in 1 million).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to furilazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of furilazole, EPA considered data from a developmental toxicity study in the rat and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. The Agency is requiring a developmental toxicity study in the rabbit.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and the additional 3–fold uncertainty factor, as described above, when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a

compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion*. There is not a complete toxicity data base for furilazole. EPA concluded that the 10x safety factor should be retained and is applicable to females 13–15 years only. This decision was based on the following: (a) There is a data gap for a developmental toxicity study in rabbits; and (b) There is evidence of qualitative increased susceptibility in the developmental toxicity study in rats. Increased resorptions (or death of fetuses) seen at the LOAEL is a more severe effect than increased maternal liver weight seen at the same level.

2. *Acute risk*. For infants and children, < 1% of the aPAD is occupied by dietary exposure through food which is below EPA's level of concern of 100%. The estimated acute concentrations of furilazole in surface and ground water are less than EPA's levels of comparison for furilazole in drinking water. Therefore, EPA does not expect the aggregate risk to exceed 100% of the aPAD.

3. *Chronic (non-cancer) risk*. Using the exposure assumptions previously described, EPA has concluded that aggregate exposure to furilazole from food will utilize less than 1 percent of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated average concentrations of furilazole in surface and ground water are less than EPA's levels of comparison for furilazole in drinking water. Therefore, EPA does not expect the aggregate risk to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk*. Since there are no residential uses or exposure scenarios, short, intermediate, and long-term aggregate risk assessments were not conducted.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *furilazole residues.*

IV. Other Considerations

A. Endocrine Disruptor Effects

FQPA requires EPA to develop a screening program to determine whether certain substances (including all pesticides and inerts or inactive ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing furilazole (3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine) for endocrine effects may be required.

B. Metabolism in Plants and Animals

The nature of the residue in corn was found to be understood based on submitted greenhouse and field metabolism studies. It was concluded that there is possible incorporation into natural plant components. The only residue of concern is parent furilazole.

C. Analytical Enforcement Methodology

An adequate enforcement method (capillary gas chromatography using electron capture detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

D. Magnitude of Residues

Field trials on field corn were conducted and the data submitted. The submitted data support the time-limited tolerance level of 0.01 ppm for corn (grain stover, forage).

E. International Residue Limits

There are no CODEX, Canadian or Mexican limits for residues of furilazole in corn raw agricultural commodities.

F. Rotational Crop Restrictions

EPA has determined that a plantback interval of 30 days for furilazole is supported by the data.

V. Conclusion

Therefore, time-limited tolerances are established for residues of the inert ingredient herbicide safener 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine), which is also known as furilazole in or on corn commodities, (grain, forage, and stover), at 0.01 ppm. The tolerances will expire and be revoked on February 25, 2002. The following residue chemistry data gaps have been identified for furilazole: (1) Animal metabolism studies (OPPTS GLN 860.1300), (2) radiovalidation and specificity studies for the analytical enforcement method for plants, (3) an additional 10 field trials (OPPTS GLN 860.1500). The following toxicology data gaps have been identified for furilazole (1) Chronic Toxicity (dog) (OPPTS GLN 870.4100), (2) Developmental Toxicity (rabbit) (OPPTS GLN 870.3700), (3) General Metabolism (870.7485) and (4) *in vitro* cytogenetic assay (OPPTS GLN 870.6375). These datagaps must be addressed to establish permanent tolerances. These tolerances are being established on a time-limited basis due to an incomplete database.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300968 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 24, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the

information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300968, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.' ''Policies that have federalism implications' is defined in the Executive Order to include regulations that have 'substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.471 is revised to read as follows:

§ 180.471 Furilazole; tolerances for residues.

(a) *General.* Tolerances to expire February 25, 2002 are established for residues of furilazole; 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine) (CAS Reg. No.121776–33–8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities:

Commodity	Parts per million	Revocations/ Expiration Date
Corn, field, forage.	0.01	February 25, 2002
Corn, field, grain.	0.01	February 25, 2002
Corn, field, stover.	0.01	February 25, 2002
Corn, pop, grain.	0.01	February 25, 2002
Corn, pop, stover.	0.01	February 25, 2002

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–4237 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300970; FRL–6490–7]

RIN 2070–AB78

Acrylic Graft Copolymer, Polyester Block Copolymer and Polyester Random Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the polymers methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer minimum number average molecular weight (in amu) 2,730, also known as acrylic graft copolymer; 12-hydroxystearic acid-polyethylene glycol copolymer minimum number average molecular weight (in amu) 3,690, also known as polyester block copolymer; and polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer also known as polyester random copolymer minimum number average molecular weight (in amu) 2,960, in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or animals. Uniqema, formerly ICI Surfactants, 3411 Silverside Road, Box 8340 Wilmington, DE 19803, submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting exemptions from the requirement of a tolerance for these copolymers. This regulation eliminates the need to establish a maximum permissible level for residues of these polymers.

DATES: This regulation is effective February 23, 2000. Objections and requests for hearings, identified by docket control number OPP–300970, must be received by EPA on or before April 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300970 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 308–6379 and e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300970. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 17, 1999 (64 FR 13192) (FRL–6066–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of pesticide tolerance petitions (PP 8E4987, 8E4988, and 8E4989) by Uniqema, formerly ICI Surfactants, 3411 Silverside Road, Box 8340 Wilmington, DE 19803. This notice included a summary of the petitions prepared by the petitioner. There were no comments received in response to the notice of filing.

Pesticide petitions 8E4987, 8E4988 and 8E4989 requested that 40 CFR 180.1001(c) be amended by revising the existing tolerance exemptions for methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No. 119724–54–8); 12-hydroxystearic acid-polyethylene glycol copolymer (CAS Reg. No. 70142–34–6) and polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (CAS Reg. No. 68650–28–2), and that 40 CFR 180.1001(e) be amended by establishing an exemption from the requirement of a tolerance for residues of these copolymers.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymers, acrylic graft copolymer; polyester block copolymer and polyester random copolymer are not cationic polymers nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.
2. The polymers contain as an integral part of their composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymers do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymers are neither designed nor can they be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymers are not water absorbing polymers with number average molecular weights (MW) greater than or equal to 10,000 daltons. Additionally, the polymers, acrylic graft copolymer; polyester block copolymer and polyester random copolymer, also meet as required the following exemption criteria specified in 40 CFR 723.250(e).
7. The polymer's number average molecular weights (MW) of 2,730, 3,690, and 2,960, respectively are greater than 1,000 and less than 10,000 daltons. The polymers contain less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymers do not contain any reactive functional groups.

Thus, the polymers acrylic graft copolymer; polyester block copolymer and polyester random copolymer meet all the criteria to be considered low risk polymers under 40 CFR 723.250. Based on their conformance to the above

criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acrylic graft copolymer; polyester block copolymer and polyester random copolymer.

V. Aggregate Exposures

For the purposes of assessing potential exposure under these exemptions, EPA considered that acrylic graft copolymer; polyester block copolymer and polyester random copolymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MWs of acrylic graft copolymer; polyester block copolymer and polyester random copolymer are 2,730, 3,690 and 2,960 daltons, respectively. Generally, polymers the size of these would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acrylic graft copolymer; polyester block copolymer and polyester random copolymer conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to acrylic graft copolymer; polyester block copolymer or polyester random copolymer a tolerance is not necessary.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not acrylic graft copolymer; polyester block copolymer or polyester random copolymer share a common mechanism of toxicity with any other chemicals. However, acrylic graft copolymer; polyester block copolymer and polyester random copolymer conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of acrylic graft copolymer; polyester block copolymer or polyester random copolymer.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acrylic graft copolymer; polyester block copolymer and polyester random copolymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that acrylic graft copolymer; polyester block copolymer or polyester random copolymer are endocrine disruptors.

B. Existing Exemptions from a Tolerance

Currently in 40 CFR 180.1001(c) methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer minium number average molecular weight (in amu) 18,000; 12-hydroxystearic acid-polyethylene glycol copolymer (CAS Number 70142–34–6) minium number average molecular weight (in amu) 5,000; and polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer minium number average molecular weight (in amu) 5,000 are all exempt from the requirement of a tolerance when used as a surfactant, dispersing agent, suspending agent, or related adjuvants.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for acrylic graft copolymer; polyester block copolymer or polyester random copolymer nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No. 119724–54–8) minium number average molecular weight (in amu) 2,730; 12-hydroxystearic acid-polyethylene glycol copolymer (CAS Reg. No. 70142–34–6); and polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (CAS Reg. No. 68650–28–2) from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300970 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that

information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, 401 M Street, SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300970, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes exemptions from the tolerance requirement under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a

''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.P='03'≤

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.P='04'≤

2. In § 180.1001 the table in paragraph (c) is amended by revising the entries for the following inert ingredients and in paragraph (e) by adding alphabetically the following inert ingredients to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
12-Hydroxystearic acid-polyethylene glycol copolymer (CAS Reg. No. 70142–34–6) minimum number average molecular weight (in amu) 3,690.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		
Methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No. 119724–54–8) minium number average molecular weight (in amu) 2,730.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (CAS Reg. No. 68650–28–2) minimum number average molecular weight (in amu) 2,960.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * *		
12-Hydroxystearic acid-polyethylene glycol copolymer) (CAS Reg. No. 70142–34–6) minimum number average molecular weight (in amu) 3,690.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		
Methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No.119724–54–8) minium number average molecular weight (in amu) 2,730.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid (CAS Reg. No. 68650–28–2) minimum number average molecular weight (in amu) 2,960.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		

[FR Doc. 00–4238 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300975; FRL–6489–8]

RIN 2070–AB78

Zinc Phosphide; Extension/ Amendment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends and amends a time-limited tolerance for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on alfalfa forage and hay at 1 part per million (ppm) for an additional 1-year and 4-month period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on alfalfa before new growth attains a length of 2 inches. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective February 23, 2000. Objections and requests for hearings, identified by docket control number OPP–300975, must be received by EPA on or before April 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300975 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby]@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **"FOR FURTHER INFORMATION CONTACT."**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300975. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 25, 1998 (63 FR 45176) (FRL–6021–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on alfalfa (forage, hay) at 0.1 ppm, with an expiration date of February 1, 2000. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA, subsequently, issued a final rule, published in the **Federal Register** of July 28, 1999 (64 FR 40769) (FRL–6090–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it extended the time-limited tolerance for the residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on alfalfa (forage, hay) at 0.1 ppm, with an expiration date of August 1, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend and amend the use of zinc phosphide on alfalfa for this year's growing season due to the need in California to control voles which feed both on the root system and the above ground portion of plants. Feeding by voles opens up alfalfa stands for weed invasion, devitalizes crop stands, and reduces stand longevity. The currently available methods of control, including the use of zinc phosphide bait boxes and flood irrigation, are inadequate and impractical; and that if growers cannot use zinc phosphide significant economic losses will occur this year. Predictions are that losses could reach $10 million. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of zinc phosphide on alfalfa before new growth attains a length of 2 inches for control of voles in California.

EPA assessed the potential risks presented by residues of zinc phosphide in or on alfalfa forage and hay. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 25, 1998 (63 FR 45176) (FRL–6021–6). Since this action is for alfalfa, which is not a human food item (residues not expected in alfalfa seed based on application timing), and residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorous compounds, the human health risk assessment has not changed. Based on that data and information considered, the Agency reaffirms that extension and amendment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended and amended for an additional 1-year and 4-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on alfalfa forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300975 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300975, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-*

docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 ote). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.284, by amending paragraph (b) by revising the entries for alfalfa (forage) and alfalfa (hay) to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa (forage)	1.0	12/31/02
Alfalfa (hay)	1.0	12/31/02
* * *	*	* * *

* * * * *

[FR Doc. 00–4239 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6541–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a petition submitted by Chaparral Steel Midlothian, L.P.(Chaparral Steel) to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition submitted by Chaparral Steel Midlothian, L.P., to delist the leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump on a ''generator specific'' basis from the lists of hazardous waste.

After careful analysis, we have concluded that the petitioned waste is

not hazardous waste when disposed of in the surface impoundments. This exclusion applies to leachate from Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater at Chaparral Steel's Midlothian, Texas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: February 23, 2000.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''F–99–TXDEL–CHAPARRAL.'' The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this notice, contact David Vogler, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7428.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
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B. Why is EPA Approving This Delisting?
C. What are the Limits of This Exclusion?
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F. How Does This Action Affect States?
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A. What is a Delisting Petition?
B. What Regulations Allow Facilities to Delist a Waste?
C. What Information Must the Generator Supply?
III. EPA's Evaluation of the Waste Data
A. What Wastes did Chaparral Steel Petition EPA to Delist?
B. How Much Waste did Chaparral Steel Propose to Delist?
C. How did Chaparral Steel Sample and Analyze the Waste Data in This Petition?
IV. Public Comments Received on the Proposed Exclusion
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B. Is the Delisting of Chaparral Steel's Waste a Threat to Ground Water?
C. Is the Delisting of Chaparral Steel's Waste a Threat to Surface Water?
D. Are There Any Typographical and Data Transfer Errors From the Proposed Delisting Publication?
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VII. Paperwork Reduction Act
VIII. Unfunded Mandates Reform Act
IX. Congressional Review Act
X. Executive Order 12875
XI. Executive Order 13045
XII. Executive Order 13084
XIII. National Technology Transfer and Advancement Act

I. Overview Information

A. What Action is EPA Finalizing?

The EPA is finalizing the decision to grant Chaparral Steel's petition to have their leachate and minor amounts of waste water excluded, or delisted, from the definition of a hazardous waste.

After evaluating the petition, EPA proposed, on August 24, 1999, to exclude the Chaparral Steel waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 46166).

B. Why is EPA Approving This Delisting?

Chaparral Steel petitioned to exclude the landfill leachate and other wastewaters because it does not believe that the petitioned waste meets the criteria for which it was listed.

Chaparral Steel also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See,* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this notice, EPA believes that Chaparral Steel's landfill leachate and other K061 wastewaters should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Chaparral Steel, located in Midlothian, Texas, for its leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump.

C. What are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 are met. The waste described in the petition is leachate from Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump.

D. How Will Chaparral Steel Manage the Waste if it is Delisted?

The leachate is currently sent to an offsite underground injection well facility for disposal. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral Steel must ensure that the onsite management of the delisted wastes is in accordance with the Texas Natural Resource Conservation Commission (TNRCC) rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

E. When is the Final Delisting Exclusion Effective?

This rule is effective February 23, 2000. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010(b) of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA

requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral Steel transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral Steel must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260, through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste did Chaparral Steel Petition EPA to Delist?

Chaparral Steel Midlothian, L.P., petitioned the EPA to exclude from hazardous waste control leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. The listed constituents of concern for K061 are chromium, lead, and cadmium.

B. How Much Waste did Chaparral Steel Propose to Delist?

Specifically, in its petition, Chaparral Steel requested that EPA grant an exclusion for leachate from its Landfill No. 3 containing K061 electric arc furnace dust and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump in the amount of 2,500 cubic yards (500,000 gallons) generated per calender year.

C. How did Chaparral Steel Sample and Analyze the Waste Data in This Petition?

To support its petition, Chaparral submitted:

(1) Historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;

(2) Analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;

(3) Analytical results of the constituent list derived from appendix IX for identified constituents;

(4) Analytical results for reactive sulfide;

(5) Analytical results for reactive cyanide;

(6) Test results for corrosivity by pH;

(7) Analytical results of samples from bench tests of treated leachate/K061 wastewater; and

(8) Test results for oil and grease.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

i. One commenter supported the delisting but was concerned that the rule implies that storm water from melt shop baghouse areas at similar facilities would be required to be considered K061 waste water. The EPA does not intend to imply that this would be the case. Chaparral Steel removes its storm water from the baghouse area and places it in a tank containing K061 leachate and manages the waste as K061. Other generators must characterize their own storm water based on relevent circumstances involved with the generation, management, and disposal of the water.

ii. Two commenters from the same address submitted concerns that their private ground water well and the creek on their property would become contaminated because of the approval of the delisting. A public hearing was requested by these two requestors but not granted.

B. Is the Delisting of Chaparral Steel's Waste a Threat to Ground Water?

No, as explained in the proposed exclusion (delisting), EPA concluded that the constituents in the raw leachate, with the exception of lead, if released directly to the groundwater would not reach levels of concern at a down gradient well. The EPA added as a condition or requirement of delisting the waste that the maximum concentration level of lead in the leachate could not exceed 0.69 mg/l. *See* 64 FR 46176. The 0.69 mg/l concentration value is the Land Disposal Restriction (LDR) value for lead. This concentration is below the health-based value of 1.02 mg/l which is a value calculated for a theoretical down gradient well. The more conservative value was selected as a delisting limit.

Other assumptions made by EPA in the evaluation process were also very conservative. The value for largest amount of leachate generated on a per year basis was used in evaluation. Typically, the amount of leachate generated on a yearly basis is much less than the maximum and the amount generated is decreasing over time. Also, EPA evaluated the waste at the highest concentrations found in analyzing the waste or worst case concentrations. Actually, concentrations of constituents in the waste are less if the average value is used for evaluation purposes. If the leachate is added to the cooling system

as proposed by the facility, the concentrations of the constituents in the leachate would be reduced by the well water in the approximately eight million gallon cooling system. According to facility information, nearly 240 million gallons of well water is added to the system annually. The EPA conservatively evaluated a release of raw leachate to the ground water and not the leachate diluted by the cooling system water. The EPA also conservatively assumed a significant release of raw leachate would occur. However, the proposed management scenario for the raw leachate is in an above ground tank with secondary containment. Therefore, it is very unlikely a significant release to the environment would occur.

Because of the conservative assumptions made above (or reasonable worst case scenario), EPA concludes that granting the delisting adds no significant threat to contamination of ground water wells in general even if not managed as proposed in the onsite cooling pond system. As previously stated, although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral Steel must ensure that the onsite management of the delisted wastes is in accordance with the TNRCC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

The EPA concludes that granting the delisting adds no significant threat to the contamination of the ground water of the commenter's well specifically. The commenter's well is about one mile away from the cooling water ponds and 500 foot in depth. The soils and geologic formations in the area have a low hydraulic conductivity. The combination of the distance to the well, the depth to the well, and the low hydraulic conductivity make it very unlikely that the commenter's well can be contaminated from the delisted waste.

C. Is the Delisting of Chaparral Steel's Waste a Threat to Surface Water?

No, the impact of the petitioned wastes via the surface water route is not a threat. If the leachate is added to the cooling system and associated holding ponds as proposed by the facility, an overflow is an unlikely event and would not ever occur under reasonable circumstances. A release to surface water would most potentially occur only if the plant was shut down and there was a large rainfall event at the same time. In the unlikely event of a release, the facility is required to meet applicable storm water permit concentration levels to protect human health and the environment.

Even though release to surface water is unlikely, EPA evaluated a 100-year, 24 hour rainfall event with the cooling ponds at no freeboard capacity which are also unlikely events. Under normal conditions the ponds would have enough additional capacity (freeboard) to catch all precipitation without an overflow occurring. If such a worst case scenario were to occur, calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the stream at the facility's outfall. See regulatory docket for ''Docket Report on Evaluation of Contaminant Releases to Surface Water Resulting Form Chaparral Steel Midlotian, L.P.'s, Petitioned Waste'' document. Because of these reasons, EPA concludes that approving the delisting will not significantly impact the stream at the facility's outfall nor at the commenter's location which is approximately one mile downstream. The delisting is protective of human health and the environment.

D. Are There Any Typographical and Data Transfer Errors From the Proposed Delisting Publication?

The EPA is correcting the maximum organic total constituent concentration values for 2-butanone and carbon disulfide found in Table 1. of the proposed exclusion (64 FR 46169, August 24, 1999). The value for 2-butanone total constituent analysis for raw leachate (mg/l) should be 0.005 and not 0.003. The value for carbon disulfide total constituent analysis for treated leachate (mg/l) should be <0.005 and not 0.005.

The EPA is also making a change in Paragraph (5) of the Table 2 language to be consistent with Paragraph (6). The sentence which states ''Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA'' has been altered to read ''Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to reopen the exclusion as described in Paragraph (6).''

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact due to today's final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules

with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 2, 2000.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 the following waste stream is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have been pumped to tank storage (at a maximum generation of 2500 cubic yards or 500,000 gallons per calender year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after February 23, 2000. Chaparral Steel must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by the method specified in SW–846. (2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. Treatment residuals precipitated will be designated as a hazardous waste. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). (A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch. (B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous. (4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (*e.g.,* use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1). (5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to reopen the exclusion as described in Paragraph (6). All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

* * * * *

[FR Doc. 00–4231 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–248; MM Docket No. 99–164; RM–9598; MM Docket No. 99–165; RM–9599; MM Docket No. 99–166, RM–9600]

Radio Broadcasting Services; Mitchell, NE, Lovelock, NV, Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Mountain West Broadcasting, allots Channel 257A to Mitchell, NE, as the community's first local aural service; at the request of Mountain West Broadcasting and Lovelock Broadcasting Company, allots Channel 292C1 to Lovelock, NV, as the community's first local aural service; and at the request of Mountain West Broadcasting and Elko Broadcasting Company, allots Channel 248C1 to Elko, NV, as the community's fifth local aural service. *See* 64 FR 28426, May 26, 1999. Channel 257A can be allotted to Mitchell, NE, without the imposition of a site restriction, at coordinates 41–56–36 NL; 103–48–30 WL. Channel 292C1 can be allotted to Lovelock, NV, without the imposition of a site restriction, at coordinates 40–10–48 NL; 118–28–24 WL. Channel 248C1 can be allotted to Elko, NV, without the imposition of a site restriction, at coordinates 40–49–48 NL; 115–45–36 WL. A filing window for these channels will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 99–164, 99–165 and 99–166, adopted February 2, 2000, and released February 11, 2000.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Mitchell, Channel 257A.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 248C1 at Elko and adding Lovelock, Channel 292C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–4171 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE40

Endangered and Threatened Wildlife and Plants; Final Rule to List the Riparian Brush Rabbit and the Riparian, or San Joaquin Valley, Woodrat as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian or San Joaquin Valley woodrat (*Neotoma fuscipes riparia*). Only a single population of each subspecies has been confirmed, in Caswell Memorial State Park (Park), San Joaquin County, California. These two subspecies are threatened primarily by flooding, wildfire, disease, predation, competition, clearing of riparian vegetation, use of rodenticide, and loss of genetic variability. Naturally occurring random events increase the risk to the single, small population of each subspecies. This rule implements the Federal protection and recovery provisions afforded by the Act for these two subspecies.

EFFECTIVE DATE: This final rule is effective March 24, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2606, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Heather Bell, staff biologist, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section), telephone 916/414–6464; facsimile 916/414–6486.

SUPPLEMENTARY INFORMATION:

Background

Even though riparian brush rabbit (*Sylvilagus bachmani riparius*) specimen records and sightings were known from along the San Joaquin River near the boundary of San Joaquin and Stanislaus Counties, Orr (1935, in Orr 1940) believed, based on the presence of suitable habitat, that the species' historical range extended along the Sacramento and San Joaquin river systems, from Stanislaus County to the Delta region. Historical records for the riparian woodrat (*Neotoma fuscipes riparia*) are similarly distributed along the San Joaquin, Stanislaus, and Tuolumne Rivers, and Corral Hollow, in San Joaquin, Stanislaus, and Merced Counties (Hooper 1938; Williams 1986). Thus, prior to the statewide reduction of riparian communities by nearly 90 percent (Katibah 1984), the riparian brush rabbit and riparian woodrat probably ranged throughout the extensive riparian forests along major streams flowing onto the floor of the northern San Joaquin Valley.

Today only one extant population of each of these subspecies is known. The remnant population of each subspecies is in a 104.5 hectare (ha) (258 acre (ac)) fragment of riparian forest on the Stanislaus River at the Park (Williams 1993) situated on the border of San Joaquin and Stanislaus Counties, northwest of Modesto, in the northern San Joaquin Valley, California. Upstream and downstream of the Park, some original riparian habitat remains on private property. However, the fragments are small, isolated, and unlikely to be inhabited by either riparian brush rabbits or riparian woodrats. In January of 1997, the Park flooded, submerging most of the habitat of these two subspecies. Evidence of only three riparian brush rabbits and six riparian woodrats was seen immediately following this flooding episode (Daniel F. Williams, California State University, Stanislaus, *in litt.* 1997). In 1998, only one riparian brush rabbit and nine riparian woodrats were live-trapped (D. Williams, *in litt.* 1998). Other potential threats include wildfire, disease, predation, competition, rodenticide use, clearing of riparian vegetation, and the loss of genetic variability. Naturally occurring events, such as drought and flooding, also increase the risk to the single, small population of each subspecies. This rule extends the protective provisions under the Act (16 U.S.C. 1531 *et seq.*) to these animals.

Discussion of the Two Subspecies

Riparian Brush Rabbit

The riparian brush rabbit was described as a distinct subspecies by Orr (1935, in Orr 1940) and is one of 13 subspecies of *Sylvilagus bachmani* (Hall 1981), 8 of which occur in California. The specimen from which the subspecies designation was described was collected from the west side of the San Joaquin River west of Modesto in Stanislaus County, California, less than 10 kilometers (km) (6 miles (mi)) from the Park. *S. bachmani* belongs to the order Lagomorpha and family Leporidae. The riparian brush rabbit is a medium to small cottontail (total length 300 to 375 millimeters (mm) (11.8 to 14.8 inches (in)), mass 500 to 800 grams (g) (1.1 to 1.8 pounds (lb)) and is unique in that the sides of the rostrum (nasal/upper jaw region of the skull), when viewed from above, are noticeably convex instead of straight or concave as in other races of *S. bachmani* (Orr 1940). The color varies from dark brown to gray above to white underneath. The subspecies is visually similar to the desert cottontail (*S. audubonii*), which also occurs in riparian habitats within the historical distribution of the riparian brush rabbit. The riparian brush rabbit can be distinguished from the desert cottontail by a smaller, more inconspicuous tail and uniformly colored ears (no black tip). However, in-hand identification is needed to separate juveniles of these subspecies definitively (Williams 1993).

Breeding of the riparian brush rabbits is restricted to the period of female receptivity, approximately January to

May, putting this subspecies at a competitive disadvantage to the desert cottontails outside the Park that breed all year (Mossman 1955; Service 1997). After a gestation period of 26 to 30 days, the young are born in nest cavities lined mainly with fur and covered with a grass plug (Davis 1936; Orr 1940). The young are born naked, blind, and helpless and open their eyes in 10 days (Orr 1940). The young rabbits remain in the nest about 2 weeks before venturing out, and the female will continue to suckle her young 2 to 3 weeks after their birth. Orr (1940) reported a mean litter size of 3 to 4, with extremes of 2 to 5, while Mossman (1955) reported an average of 4, with a range of 2 to 6. Riparian brush rabbits take 4 to 5 months to reach adult size but do not reach sexual maturity until the winter following birth. Females give birth to about 5 litters per season, averaging an estimated 9 to 16 young per breeding season (Basey 1990). The percentage of females active during the breeding season is unknown, but in one study, 9 of 25 female adults examined showed no signs of reproductive activity (Basey 1990). Brush rabbits have relatively small home ranges that usually conform to the size and shape of available brushy habitat (Basey 1990). In general, the home ranges of males are larger than those of females but do not overlap the primary activity centers within female territories (Basey 1990). Population estimates from the Park have varied from 88 to 452 individuals (Williams 1988), 320 to 540 individuals (Basey 1990), and 170 to 608 individuals over 81 ha (200.1 ac) (Williams 1993), but recent flooding in 1997 and 1998 reduced numbers severely. In 1997, no riparian brush rabbits were live-trapped, one was sighted, and pellets from two others were seen; in 1998, one rabbit was live trapped.

Habitat for the riparian brush rabbit consists of riparian forests with a dense understory shrub layer. Forests with a closed canopy, however, generally lack sufficient understory of shrubs to meet riparian brush rabbits' needs. Brush rabbits frequent small clearings where they bask in the sun and feed on a variety of herbaceous vegetation, including grasses, sedges, clover, forbs, shoots, and leaves. Where mats of low-growing *Rosa californica* (California wild rose) and *Rubus vitifolius* (Pacific blackberry) occur, the brush rabbits live in tunnels that run through the vines and shrubs. Other common plants in this riparian forest community are *Vitis californica* (wild grape), *Baccharis douglasii* (Douglas' coyote bush), and grasses (Basey 1990; Williams 1988). Presence of more surface litter and lack of willows in the understory signify areas of higher ground that are not flooded regularly or heavily (Williams and Basey 1986).

Brush rabbits are closely tied to cover and usually remain for several seconds to minutes just inside dense, brushy cover before venturing into the open. They seldom move more than a meter from cover. When pursued, they leap back into the cover of shrubs instead of heading into open ground (Chapman 1974, in Service 1997). They will not cross large, open areas and, therefore, are unable to disperse beyond the dense brush of the riparian forest at the Park (Williams 1988). The riparian brush rabbit can climb into bushes and trees, though its climbing is awkward and limited. This trait probably has significant survival value, given that riparian forests are subject to inundation by periodic flooding. During periods of heavy flooding, when virtually no suitable habitat remains available as refugia, the population has dropped dramatically.

During the flooding of 1976, Park personnel used boats to rescue rabbits from bushes. During the flood of 1986, which was short lived, it was estimated that all but 10–25 rabbits at the Park were lost (D. Williams, *in litt.* 1997). The population rebounded to 213–312 individuals by 1993 (Williams 1993), and the Park was considered at carrying capacity (the maximum population that a particular environment can sustain) under prevailing environmental conditions (following 7 years of drought). Surveys were conducted in May 1997, after extensive winter flooding at the Park, but no riparian brush rabbits were live-trapped. One brush rabbit was live-trapped in February 1998, following a heavy and continuous rainfall.

Such extraordinarily low population levels subject this subspecies to increased genetic risks and naturally occurring random events (see discussion in Factor E of the Summary of Factors Affecting the Species section of this final rule). Surveys conducted in all potential habitat along the Merced, San Joaquin, Stanislaus, and Tuolumne rivers during 1985 and 1986 failed to locate any additional populations of riparian brush rabbits (Williams 1988).

Because the subspecies was not described until after it is believed to have been extirpated from most of its historical range, definitive information on its former distribution is lacking. It apparently has been extirpated from the Sacramento-San Joaquin River Delta, as well as most of the lower San Joaquin River and its tributaries, and the Stanislaus, Tuolumne, and Merced rivers (Williams 1986). The range of the subspecies probably extended farther upstream than the Merced River, assuming that suitable habitat historically occurred along the length of the San Joaquin River system (Williams and Basey 1986).

Riparian Woodrat

The riparian woodrat (*Neotoma fuscipes riparia*) was first described by Hooper (1938), and is one of 11 subspecies of *N. fuscipes* in the family Muridae (order Rodentia). The specimens from which the subspecies designation was described were collected about 3 km (2 mi) northeast of Vernalis, west of Modesto in Stanislaus County, California, approximately 10 km (6 mi) from the Park. Although some taxonomic studies of the genus *Neotoma* have been completed in recent years, no further systematic revisions of *N. fuscipes* have been published since Hooper's 1938 report (Hall 1981; Williams 1986; Williams 1993). The genetic structure of selected populations of *N. fuscipes,* including *N. fuscipes riparia,* is currently being examined (James Patton, University of California, Berkeley, *in litt.* 1998). The riparian woodrat is a medium-sized rodent, averaging 443 mm (17.4 in) in total length, including its 217 mm (8.5 in.) furred tail (Hooper 1938), and ranges from 200 to 400 g (7.05 to 14.11 ounces (oz)) in weight, with marked seasonal variation (Williams *et al.* 1992; Service 1997). *Neotoma fuscipes riparia* differs from other, adjacent subspecies of woodrats by being larger, lighter, and more grayish in color, with white hind feet instead of dusky on their upper surfaces, and a tail more distinctly bicolored (lighter below and darker on top). In addition, skull measurements and skull characteristics differ (Hooper 1938).

The following information is taken from a number of studies on *Neotoma fuscipes,* including *N. f. riparia* and related subspecies. The dusky-footed woodrat lives in loosely cooperative societies and has a matrilineal (mother-offspring) social structure. Males are highly territorial and aggressive, especially during the breeding season when they will mate with more than one female (Kelly 1990, in Service 1997). Females have 1 to 5 litters per year with 3 to 4 young in each litter. Reproduction occurs in all months, with the fewest pregnancies in December and the most in February. Numbers of juveniles appearing outside the nest is greatest in July and least in January and February (Williams *et al.* 1992). The young are born in stick nest houses, or

lodges, on the ground, which measure 0.6 to 0.9 meters (m) (2 to 3 feet (ft)) high and 1.2 to 1.8 m (4 to 6 ft) in diameter. Most houses are positioned over or against logs (Cook 1992). Unoccupied houses can persist 20–30 years (Linsdale and Tevis 1951, in Service 1998) if not destroyed by flooding (D. Williams, pers. comm. 1998). Unlike other subspecies, the riparian woodrat occasionally builds nests in cavities in trees and in artificial wood duck nest boxes (Williams 1986). Nest houses typically are occupied by an individual adult. Unlike males, females remain in or near natal areas (birthplace) throughout their life (Williams *et al.* 1992). At the Park, Williams (1993) reported a mean density of 8.32 houses per hectare (ha) (20.55 houses per acre (ac)), or 757 houses on 91 ha (225 ac) of suitable habitat; occupancy was not verified. In a study of another subspecies of *N. fuscipes,* Linsdale and Tevis (1951, in Service 1998) found that 70 percent of the population survived less than 1 year, 27 percent survived 2 years, and 3 percent survived 3 years or more. Williams *et al.* (1992) also cited a number of studies that indicated woodrats are highly responsive to habitat alteration, with populations fluctuating widely in response to a variety of natural or manmade factors, such as fire, flood, drought, habitat modification, and browsing and trampling by ungulates. Cook (1992) estimated the Park population at 637 woodrats over 102 ha (252 ac) of habitat. Williams (1993) estimated a peak population at Caswell of 437 animals, based on mean density of 4.8 woodrats per ha on 91 ha (225 ac) of suitable habitat. A woodrat population was reported from the early 1970s near the type locality at Vernalis, but the current status of the population is unknown (Williams 1986). Between April 1, 1997, and March 20, 1998, 15 riparian woodrats were live-trapped at the Park (D. Williams *in litt.* 1998).

Riparian woodrats are common where there are deciduous valley oaks but few live oaks. Riparian woodrats are most numerous where shrub cover is dense and least abundant in open areas. In riparian areas, highest densities of woodrats and their houses are often encountered in willow thickets with an oak overstory (Linsdale and Tevis 1951, in Service 1998). Mostly active at night, the woodrat's diet is diverse and principally herbivorous, with leaves, fruits, terminal shoots of twigs, flowers, nuts, and fungi comprising the bulk of ingested material (Williams *et al.* 1992).

The range of the riparian woodrat is far more restricted today than it was in 1938 (Williams 1986). The only verified population is restricted to about 102 ha (252 ac) of riparian forest at the Park on the Stanislaus River. Loss, fragmentation, and degradation of habitat are the principal reasons for the decline of the riparian woodrat (Service 1997). The most immediate threats include flooding of Park lands and wildfires. Because the riparian woodrat is able to climb trees more easily than the brush rabbit, the woodrat may not be directly affected by flooding to the degree the riparian brush rabbit is. Woodrat houses, which are essential to survival, can, however, be severely impacted by flooding, thus affecting the viability of the population. Wildfires are of concern because of the potential for severe degradation of habitat and the loss of individuals unable to escape the fire. In addition to the threat of random natural events such as flooding and fire, the riparian woodrat is also prone to the effects of ongoing threats such as disease, predation, and potential competition with the exotic black rat (*Rattus rattus*) (D. Williams, *in litt.* 1998; D. Williams, pers. comm. 1998). No specific conservation measures for the riparian woodrat are in place, but the species does receive some protection through the management plan for the riparian brush rabbit at the Park. The California Department of Parks and Recreation has supported some general small-mammal studies and woodrat population studies at the Park (Cook 1992; Williams 1993).

Today, riparian communities of the lower San Joaquin River and its tributaries outside the Park have virtually been eliminated. The remaining habitat patches are small, narrow fragments confined within levees. The placement of these levees has eliminated the natural floodplain of the Stanislaus River, increasing the severity of the flooding that occurs within the confines of the levees. Therefore, the Park, which is on the river side of the levees, is prone to flood completely during major storms or heavy flow releases from New Melones dam (D. Williams, pers. comm. 1998). Because remaining riparian forests are small, isolated, and vulnerable to major flood events (Williams and Basey 1986), whether they can support viable populations of these subspecies over the long-term is questionable. Historical habitat and refugia from flooding in surrounding lands are now unsuitable for these subspecies, as these lands consist primarily of cultivated fields, orchards, and vineyards (Williams and Basey 1986). Wildfire, flooding, brush clearing, predation, competition, disease, and use of rodenticides imperil the continued existence of these two subspecies in their last known population center.

Previous Federal Action

Federal action on these two subspecies began on September 18, 1985, when we published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the riparian brush rabbit and riparian woodrat as category 2 candidate species. Category 2 candidates, a designation discontinued in a Notice of Review published by us on February 28, 1996 (61 FR 7596), were taxa for which we had information in our possession indicating that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available. In the January 6, 1989, Animal Notice of Review (54 FR 554), we elevated the riparian brush rabbit to a category 1 candidate species as a result of more intensive field work by Williams and Basey (1986) that identified only a single remaining population of this subspecies. Category 1 taxa were those for which we had substantial information on biological vulnerability and threats to support preparation of listing proposals. We retained the riparian brush rabbit as a category 1 candidate and elevated the status of the riparian woodrat to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804). This change was based on a re-evaluation of the information contained in the study conducted by Williams and Basey (1986). The November 15, 1994, Animal Notice of Review (59 FR 58987) included both subspecies in category 1. Upon publication of the February 28, 1996 combined Animal and Plant Notice of Review (61 FR 7596), we ceased using category designations and included both subspecies as candidates. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for these animals was continued in the September 19, 1997, Notice of Review (62 FR 49398).

Based on the decline in numbers of both these subspecies as identified during the live-trapping surveys of 1997 (D. Williams, *in litt.* 1997) and the threats to their continued existence, the riparian brush rabbit and riparian woodrat were proposed for listing as endangered on November 21, 1997 (62 FR 62276).

The processing of this final rule conforms with our Listing Priority

Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule. This additional information did not alter our decision to list the two subspecies.

Summary of Comments and Recommendations

In the proposed rule published November 21, 1997 (62 FR 62276), we requested that all interested parties submit factual reports or information that might contribute to the development of a final rule for the riparian brush rabbit and the riparian woodrat. The public comment period closed on January 21, 1998. We contacted appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties and requested comments. We published a newspaper notice in The Modesto Bee on January 20, 1998, which invited general public comment. Given the flood events of 1997 and 1998, on April 13, 1998, the public comment period was reopened (63 FR 17981) to consider any new survey information or other new information prior to making the final status determinations. This comment period ended May 28, 1998.

We received 11 comments concerning the proposed rule during the comment period, from a total of 10 commenters. Some commenters submitted more than one comment to us. Six commenters supported the listing; four commenters were neutral. No commenters opposed the proposed listing. Several commenters provided additional information that, along with other clarifications, has been incorporated into the "'Background'" or "'Summary of Factors Affecting the Species'" sections of this final rule. Comments have been organized into specific issues. These issues and our responses are summarized as follows:

Issue 1: Two commenters expressed concern that the area around the Park should be protected from further urban development.

Our Response: Habitat protection afforded by the Act (under section 7) to species listed as threatened or endangered requires Federal agencies to consult with us on any action that is funded, authorized, or carried out by a Federal agency. The concerns for the subspecies will be addressed and measures may be implemented to ensure that the proposed action will not jeopardize the continued existence of either the riparian brush rabbit or the riparian woodrat. For detailed discussions of the section 7 consultation process, see the Available Conservation Measures section of this final rule. In addition, once the subspecies are listed, a recovery plan (or plans) is drafted (for a discussion of the recovery planning process, see the Available Conservation Measures section of this final rule).

Issue 2: The Department of Parks and Recreation, which owns and manages the Park, was concerned about restrictions the listing of these two subspecies may have on the recreational and maintenance activities at the Park.

Our Response: We recognize these concerns and anticipate continuing to work closely with the Department of Parks and Recreation and staff at the Park in furthering protective measures, many of which have already been voluntarily implemented. We are confident that the protection and recovery of these two subspecies will be compatible with recreational and maintenance activities at the Park.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four independent and appropriate specialists regarding review of pertinent scientific or commercial data and issues relating to the taxonomy, population models, and supportive biological and ecological information for the riparian brush rabbit and the riparian woodrat.

We received comments from two of the four requested peer reviewers. Both reviewers stated that the proposed rule contained an accurate summary of the natural history, current status, and current threats to survival of the two subspecies and that listing was warranted. One reviewer was concerned that the listing may be too late to prevent extinction by natural factors alone. The other reviewer suggested clarifications or changes within the text. The reviewer suggests that (1) low population numbers of the brush rabbit clearly make it extremely vulnerable to detrimental genetic processes and random events, while the proposed rule suggested such populations may be only somewhat vulnerable; (2) decreased survivorship of young is the best known of the effects of inbreeding (deleterious genes). Inbreeding actually reduces all of the following: fecundity, juvenile survivorship, and adult lifespan; and (3) the reviewer provided a reference to a new study by Saccheri *et al.* (1998) that states "* * * inbreeding can contribute significantly to the extinction of wild populations' (Katherine Ralls, Smithsonian Institution, *in litt.* 1998). Information and suggestions provided by the reviewers have been taken into consideration during the development of this final rule and incorporated where appropriate.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. We determine if a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and how we applied them to the riparian brush rabbit and to the riparian woodrat are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Sylvilagus bachmani riparius and Neotoma fuscipes riparia inhabit riparian forest communities, and both apparently have been extirpated from their entire historical range except for a single known population of each along the Stanislaus River. Katibah (1984) estimated that only 41,300 ha (102,052 ac) remain of an estimated 373,000 ha (921,170 ac) of presettlement riparian forest in California's Central Valley, a reduction of 89 percent. He attributed the loss and modification of riparian forests along valley floor river systems to urban, commercial, and agricultural development; wood cutting; reclamation and flood control activities; groundwater pumping; river channelization; dam construction; and water diversions (Katibah 1984).

Several land use practices and related human activities contributed to the decline of the riparian brush rabbit and riparian woodrat throughout their historical ranges. During the past 10 to 20 years, cultivation has expanded along the floodplain of the main tributaries of the lower San Joaquin River system (Basey 1990). Increased habitat conversion to agricultural uses has resulted from the recent construction of the following dams on tributaries that individually and collectively have altered the timing, frequency, duration, and intensity of flooding—Exchequer Dam on the Merced River, New Melones Dam on the Stanislaus River, and New Don Pedro Dam on the Tuolumne River. Before these dams and flood control projects (levees) were constructed, much of the natural floodplain was used as pasture land for livestock grazing (Basey 1990). Uneven topography in these areas, before the dams were constructed, provided escape cover because some land remained above typical flood levels and contained patches of shrubs and trees for cover. Such sites likely provided refuge from flooding for these subspecies. Williams and Basey (1986) state that ''* * * virtually all areas outside of flood control levees now have been cleared, leveled, and planted to orchards, vineyards, or annual row crops.'' Conversion from pasture to cultivated fields also eliminated hedgerows and other residual patches of cover that provided travel corridors and refuge sites for the two subspecies. The severity of flooding likely increased as the habitat for these two subspecies was incorporated by flood control levees. The effects of catastrophic flooding are discussed further under Factor E of this section.

Although brush clearing adversely affected the habitat of the riparian brush rabbit and the riparian woodrat populations at the Park in the mid-1980s (Williams 1986), these populations are no longer directly threatened by brush clearing, tree cutting, or the conversion of land to agricultural uses. Because the only known populations of these subspecies occur within the boundaries of the Park, such activities outside of Park boundaries do not currently pose a direct threat to either subspecies. Such activities continue, however, to eliminate and fragment patches of remnant habitat within the historical range of these subspecies.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat to either subspecies. However, the very small population at the remaining site makes the riparian brush rabbit vulnerable to extinction from unauthorized recreational hunting and collection for scientific or other purposes. The brush rabbit (*Sylvilagus bachmani*) is designated as a resident small game species in California and is hunted from July 1 through January 30 with a daily bag limit of five animals (Williams and Basey 1986). Hunting regulations set by the California Fish and Game Commission do not distinguish the riparian brush rabbit from other subspecies of *S. bachmani.* Therefore, riparian brush rabbits that disperse beyond the boundaries of the Park (as they may, especially during times of flooding) face the potential threat of being hunted.

C. Disease or Predation

Like most rabbits, the riparian brush rabbit is subject to a variety of common diseases, including tularemia, plague, encephalitis, and brucellosis. These contagious, and generally fatal, diseases could be transmitted easily to riparian brush rabbits from neighboring populations of desert cottontails (Williams 1988). A suspected outbreak of plague in 1966–67 decimated woodrat populations in foothills of the southern Sierra Nevada, the Tehachapi Mountains, and the Coast Range (Murray and Barnes 1969, in Williams *et al.* 1992). The small population size and restricted distribution of both the riparian brush rabbit and riparian woodrat increase their vulnerability to epidemic diseases. However, the significance of the threat of disease to the riparian brush rabbit and riparian woodrat is not known.

Coyotes (*Canis latrans*), gray foxes (*Vulpes cinereoargenteus*), long-tailed weasels (*Mustela frenata*), raccoons (*Procyon lotor*), feral domestic cats (*Felis catus*) and dogs (*Canis familiaris*), hawks (*Accipitridae*), and owls (*Strigidae*) are known predators of brush rabbits and woodrats (Orr 1940; Williams 1988). At currently depleted population levels, any predation could substantially affect the survival of these two subspecies.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 404 of the Clean Water Act (CWA) is a Federal law that potentially affords some attention and protection for these subspecies. However, brush clearing, tree cutting, and the conversion of riparian habitat to agricultural uses, all of which adversely affect both subspecies, are generally unregulated, and this law does not provide protection from these activities. For example, pursuant to 33 CFR 323.4, the U.S. Army Corps of Engineers (Corps) has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404. Although the Corps administers flowage (flooding) and restoration easements along the lower reaches of the Stanislaus River, the difficulty of enforcing the conditions of the easements and inadequate funding for restoration impedes appropriate habitat restoration activities.

The California Department of Parks and Recreation developed a riparian brush rabbit management plan for the Park (Williams 1988). This management plan provides some measure of protection to the riparian brush rabbit population and incidental protection for the riparian woodrat. Despite the existence of a management plan, both the riparian brush rabbit and riparian woodrat remain vulnerable to threats and hazards originating outside of the Park as well as threats that continue within the Park's boundaries (see Factor E below).

Under the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000–21177), full disclosure of the potential environmental impacts of proposed projects is required. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the guidelines that guide CEQA implementation requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. However, once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations, such as overriding social or economic considerations, make mitigation infeasible (CEQA § 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species, their habitat, or

their continued existence. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The California Endangered Species Act (CESA) affords the riparian brush rabbit some conservation benefits. The State of California listed the riparian brush rabbit as an endangered species in May 1994. Although the CESA provides a measure of protection to the subspecies, resulting in the formulation of mitigation measures to reduce or offset impacts for any projects proposed in riparian brush rabbit habitat, this law has not adequately prevented the ongoing loss of riparian forest. Riparian forests outside of the Park are important for recovery implementation to succeed, as neither the riparian brush rabbit nor the riparian woodrat can be recovered on Park lands alone (Service 1997).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Small, isolated populations are especially at risk from random events as there is little or no possibility of recolonization if the random event, whether natural or manmade, affects the entire population. Random events that may be catastrophic to the riparian brush rabbit or the riparian woodrat include the threat of wildfire, severe flooding, and prolonged drought. Although the Park initiated a fire management plan to reduce fuel load and create firebreaks in an effort to protect habitat, the threat of fires originating outside of the Park boundaries and accidentally within the Park boundaries from recreational activities still exists. Wildfire exposes the riparian brush rabbit and the riparian woodrat to habitat destruction and death (Basey 1990). The brushy areas most vulnerable to fire also are important areas of habitat for riparian brush rabbits and riparian woodrats (Basey 1990). Between 1975 and 1987, 10 wildfires were reported within the Park. After 0.2 ha (0.5 ac) were burned in 1981, no evidence of brush rabbits was found in the area (Basey 1990). Fire is known to kill other species of woodrats, such as the closely related dusky-footed woodrat (*Neotoma fuscipes*), and thus presumably poses the same threat to the riparian woodrat. After a fire burned a canyon bottom dominated by oaks and sycamores in south-coastal California, Chew *et al.* (1959, in Williams *et al.* 1992) found 16 dead dusky-footed woodrats per acre.

Although flooding of low-lying riparian forests is a naturally occurring event, the changes to the river systems which began around the 1940s have altered natural flooding and its frequency, timing, and severity, due to manmade levees, dams, and water diversions. The Stanislaus River, for example, has manmade levees built to keep high flows channelized and dams upstream for flood control and water storage. The riparian habitat at the Park is confined entirely within levees, offering little protection from flooding during periods of high stream flow that routinely occur during the wet winter season. Major flooding likely drowns riparian brush rabbits and riparian woodrats, eliminates foraging habitat and shelter for prolonged periods, and exposes brush rabbits and woodrats to increased predation by stranding them in trees or on high ground where there is little or no cover (Nolan 1984, in Service 1997). Ironically the levees themselves now function as high ground during flooding events.

Surveys have confirmed that after major flooding events the numbers of riparian brush rabbits and riparian woodrats decrease, sometimes dramatically. Basey (1990) concluded, based on visual sightings and pellet surveys, that the riparian brush rabbit population may have been reduced to fewer than 15 to 20 individuals during flooding in 1983. Only about 3.6 ha (9 ac) in five small areas of the 104.5 ha (258 ac) Park showed regular use by brush rabbits in the summer of 1986 after floods in February and March of that year (Williams 1988). Williams (1986) found that riparian brush rabbits sometimes gain temporary shelter from floods by climbing trees, but he estimated that only 10 or fewer individual rabbits survived the severe winter flooding in 1985–86 (Williams 1988).

The floods of January 1997 left about 85 percent of the Park under 0.6–3.0 m (2–10 ft) or more of water in most areas for at least 2 weeks and, in lower areas, for as long as 7 weeks. Efforts in January to locate and potentially rescue stranded riparian brush rabbits resulted in the observation of only a single rabbit pellet (D. Williams, *in litt.* 1997). In areas of the Park searched visually in March 1997, no rabbits or pellets were found, although searchers did find two mounds containing fresh grass. Such mounds or ''forms'' are typically made by rabbits. In April 1997, searchers documented two rabbit fecal pellets but found no other sign of rabbits or woodrat activity. Trapping surveys were initiated in early May, well after floodwaters had receded, in hopes that any surviving rabbits would be located. During 22 nights of trapping, no rabbits were caught, one rabbit was visually sighted, and at another location, fresh rabbit tracks were found (D. Williams, *in litt.* 1997).

The riparian woodrat also is vulnerable to flooding events, although its ability to nest in trees and wood duck nest boxes (Williams 1993) suggests some ability to avoid the negative effects of flooding. Nonetheless, the large majority of woodrat nests occur on the ground (Williams 1993). After the January 1997 floods inundated the Park for 2 to 7 weeks, trapping and survey efforts in May 1997 resulted in the capture of only eight woodrats (D. Williams, *in litt.* 1997). Trapping efforts of similar intensity in 1993 resulted in the capture of 57 woodrats (D. Williams, *in litt.* 1997). Severe flooding could eliminate the Park populations of both the riparian brush rabbit and the riparian woodrat and result in the extinction of these subspecies. Flooding is also likely to increase competition between riparian brush rabbits and desert cottontails, a subspecies that occurs in a wider range of habitats, including riparian zones, within the same geographic area (Basey 1990). Riparian brush rabbits cannot return to their home areas if displaced more than about 340 m (1,115.5 ft) (Chapman 1971, in Basey 1990). Desert cottontails, in contrast, may return home when displaced as much as 4.8 km (3 mi) (Bowers 1954, in Basey 1990). Therefore, if displaced by flooding more than about 340 m (1,115.5 ft) from their home areas, riparian brush rabbits may be stranded in habitats where desert cottontails have a competitive advantage.

Drought may decrease the carrying capacity of riparian forest habitat for the riparian brush rabbit and the riparian woodrat. By 1993, following seven years of drought, riparian forest habitat at the Park was considered to be at carrying capacity for the riparian brush rabbit (Williams 1993). Depressed population densities of woodrats have been reported due to drought (Linsdale and Tevis 1951, in Service 1998). Because riparian forest habitat at the Park is an isolated area of habitat, decreased carrying capacity may affect the populations of riparian brush rabbits and riparian woodrats because more individuals compete for the same resources, such as food and shelter. In some mammals, long periods of drought and increased competition among individuals can affect individual survivorship and reproductive success (Service 1997). Surveys to determine the effects of prolonged drought on the carrying capacity of Park habitat for the riparian woodrat, however, have not been conducted.

Other factors that are a concern are the use of rodenticides in areas outside of the Park (rodenticides are no longer applied in Park habitat) and competition from exotic or invading species, such as the desert cottontail or the black rat, which may compete with the riparian brush rabbit or the riparian woodrat, respectively (Service 1997). Additionally, the extent to which recreational activities such as vehicular and pedestrian traffic and predation by domestic dogs and cats may affect these subspecies has not been studied. With severely low populations of both subspecies, these activities may have a significant effect on their survival.

The population numbers of both subspecies are now sufficiently low that the effects of inbreeding are highly likely to result in the expression of deleterious genes in the population (*i.e.,* inbreeding depression) (Gilpin 1987; K. Ralls, *in litt.* 1998). Such deleterious genes can reduce individual fitness in various ways, including decreased survivorship of young, reduced fecundity (reproductive capacity), and reduced adult lifespan (K. Ralls, *in litt.* 1998). Small populations are also at greater risk from the effects of genetic drift, a decrease in genetic variability due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to respond to environmental changes.

Presently, a multispecies habitat conservation plan (HCP) is being developed for San Joaquin County, California. The riparian brush rabbit and riparian woodrat will be considered in this HCP, and some conservation measures that will likely minimize adverse impacts and/or benefit these two subspecies. A draft HCP will be available for public review in the future. Until the HCP is released for public comment, we cannot determine how the HCP will affect these two subspecies.

In developing this final rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these subspecies. Based on this evaluation, the preferred action is to list the riparian brush rabbit and the riparian woodrat as endangered. The small population size and single locality of these two subspecies render them extremely vulnerable to a wide array of threats. These subspecies currently face immediate threats from wildfire, flooding events, and drought. In addition, they face threats from habitat destruction, competition, predation, and the use of rodenticides. The riparian forest is reduced along the San Joaquin River system to the point that the few remaining habitat remnants outside of the Park are small and isolated and cannot support viable populations of these subspecies that can persist over time. Thus, even in the event that the few remaining unsurveyed fragments of habitat do support these subspecies, the recommended listing status of the riparian brush rabbit and riparian woodrat would not change and their listing as endangered would be warranted. Projected increases in human population within the San Joaquin Valley and pressures associated with urban development, as well as the inadequacy of existing regulatory mechanisms, suggest action is needed to successfully recover the riparian brush rabbit and the riparian woodrat. Threatened status is not appropriate for either subspecies, considering the extent of loss and degradation of their habitat and the vulnerability of the remaining population.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the riparian brush rabbit and riparian woodrat because we believed it would not provide any additional benefit beyond that provided through listing as endangered since the species are only found within the State park.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the riparian brush rabbit and riparian woodrat would be prudent.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for the riparian brush rabbit and riparian woodrat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the riparian brush rabbit and riparian woodrat will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the riparian brush rabbit and riparian woodrat without further delay. However, because we have successfully

reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for these species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the riparian brush rabbit and riparian woodrat as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. As part of our outreach efforts, we will notify the Corps and U.S. Bureau of Reclamation (BOR), as well as affected landowners, to ensure they are aware of the species' presence and clarify their obligations in protecting both species under the Act.

Federal actions that may require conference or consultation with us include activities by the Corps that fund or authorize levee and channel maintenance projects along the lower San Joaquin River and its tributaries, the operation of upstream water storage facilities and dams by the Corps and BOR, and oversight of flowage (flood) and restoration easements by the Corps over riparian lands downstream from these dams. Additionally, the Federal Emergency Management Agency may be required to consult if an emergency action affected either of these subspecies.

Listing the riparian brush rabbit and riparian woodrat as endangered triggers the development of a recovery plan. Such a plan establishes a conservation framework for State, Federal, and local governmental planning. The plan sets recovery priorities and estimates costs of various tasks necessary to accomplish them. The plan also would describe site-specific management actions necessary to achieve conservation and survival of these subspecies. The riparian brush rabbit and the riparian woodrat are both included in the final ''Recovery Plan for Upland Species of the San Joaquin Valley, California'' (Service 1998), and thus the recovery planning process is already under way.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

We may be able to issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Under some circumstances, we can issue permits for a specified period for species in trade in order to relieve undue economic hardship that would be suffered if such relief were not available.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within the species' range and to assist the public in identifying measures needed to protect the species. We believe that, based on the best available information, the following actions would not likely result in a violation of section 9:

(1) Possession of legally acquired riparian brush rabbits and riparian woodrats;

(2) Light to moderate livestock grazing that prevents or minimizes the encroachment of invasive plant species;

(3) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or alteration of surface or ground water into or out of riparian areas (*i.e.,* due to roads, impoundments, discharge pipes, storm water detention basins, etc.), or wildlife habitat restoration, when such activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act;

(4) Ongoing activities at the Park that are compatible with sustaining a viable population of both subspecies. These activities include camping and recreational activities such as picnicking, swimming, hiking, and fishing, as well as routine operations such as wildfire management, mowing, trail clearing, repairing water and sewer lines, removing hazardous trees, and the application of insecticides and herbicides rodenticides consistent with label instructions and restrictions.

Activities that we believe could potentially harm the riparian brush rabbit and the riparian woodrat and

result in a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized collecting, handling, or holding in captivity of either of these subspecies;

(2) Unauthorized destruction/alteration of the subspecies habitat through the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or the alteration of surface or ground water flow into or out of a riparian area (*i.e.,* due to roads, impoundments, discharge pipes, storm water detention basins, etc.);

(3) Violation of discharge permits;

(4) Burning, cutting, or mowing of riparian vegetation, repairing water and sewer lines, and the spraying of insecticides or herbicides, if conducted in an untimely or inappropriate manner (*e.g.,* when individuals of these subspecies would be killed or injured, when reproductive efforts would be disrupted);

(5) Rodenticide applications if conducted in an untimely or inappropriate manner, or in violation of label restrictions;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, and gasoline) onto land supporting these subspecies; and

(7) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed wildlife and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references we cited, as well as others, is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary authors of this final rule are Heather Bell and Diane Windham, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section), telephone 916/414–6600.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

We amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Rabbit, riparian brush.	*Sylvilagus bachmani riparius.*	U.S.A. (CA)	Entire	E	687	NA	NA
*	*	*	*	*	*		*
Woodrat, riparian (San Joaquin Valley).	*Neotoma fuscipes riparia.*	U.S.A. (CA)	Entire	E	687	NA	NA
*	*	*	*	*	*		*

Dated: January 31, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–4207 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981221311–9096–02; I.D. 021400F]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to Required Observer Coverage

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment to reduce certain observer coverage requirements for some catcher vessels and shoreside processors participating in the Western Alaska Community Development Quota (CDQ) fisheries. This action is necessary to increase the availability of experienced and trained observers to effectively manage the CDQ fisheries in the Bering Sea and Aleutian Islands Area. It is intended to increase the flexibility of observer contractors in deploying CDQ observers and to decrease costs to the vessels and processors participating in the CDQ fisheries.

DATES: Effective March 6, 2000, through December 31, 2000. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 9, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7389.

SUPPLEMENTARY INFORMATION: NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

On June 4, 1998 (63 FR 30381), NMFS published a final rule implementing catch monitoring and observer coverage requirements for all vessels and processors participating in the multispecies (MS) CDQ fisheries. On April 26, 1999 (64 FR 20210), NMFS extended these requirements to vessels equal to or greater than 60 ft (18.3 m) length overall (LOA) that participate in the halibut CDQ fishery. These regulations were implemented because in the CDQ fisheries, all groundfish and prohibited species catch by vessels fishing for CDQ groups accrue against the CDQ groups' individual allocations. Because individual vessels, processors, and CDQ groups are accountable for the catch of groundfish and prohibited species, the catch monitoring standards must be more stringent than in many other fisheries. These final rules also implemented experience and training requirements for observers that, in most cases, exceeded the requirements in the non-CDQ fisheries.

Table 1 summarizes the current observer coverage requirements for the CDQ fisheries at 50 CFR 679.50(c) and (d). Table 2 summarizes the experience requirements necessary for a CDQ observer and a lead CDQ observer at 50 CFR 679.50(h).

Table 1. Current Observer Coverage Requirements for the CDQ Fisheries.

Category	CDQ Observer Requirements
Catcher vessel, < 60 ft	none
Catcher vessel, ≧ 60 ft	1 lead CDQ observer (obs.)
Catcher/processor, mothership	2 total (1 lead CDQ obs., 1 CDQ obs.)
Shoreside processor	1 lead CDQ obs. for each CDQ delivery, except deliveries from catcher vessels < 60 ft LOA fishing halibut CDQ

Table 2. Requirements for CDQ Observer and ''Lead'' CDQ Observer in 50 CFR 679.50

CDQ Observer Classification	Experience Requirements
All CDQ observers	Prior experience as an observer with 60 days observer data collection, - Minimum evaluation rating of 1 or 2, - Successfully complete CDQ observer training course
ADDITIONAL REQUIREMENTS FOR ''LEAD'' CDQ OBSERVERS	
Lead observer on a factory trawler or a mothership	At least 2 cruises (contracts) and sampled at least 100 hauls on a factory trawler or a mothership.
Lead on catcher vessel using trawl gear	At least 2 cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.
Lead on vessel using nontrawl gear	At least 2 cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.
Lead in shoreside plant	Observed at least 30 days in a shoreside processing plant.

At the time of initial implementation of the MS CDQ Program, lead CDQ observers were required on all vessels and in the shoreside processing plants because NMFS believed that the CDQ observers needed prior experience on a vessel using the same gear type or in a shoreside plant in order to collect the data needed to manage the CDQ fisheries. However, after reviewing the first year of the MS CDQ fisheries in December 1999, NMFS believes that reductions in some CDQ observer coverage requirements could be made without reducing the quality or quantity

of data collected by observers to manage the CDQ fisheries. This action would remove the requirement for a CDQ observer in some shoreside processing plants; reduce the requirement from a lead CDQ observer to a CDQ observer at other shoreside processing plants and on some catcher vessels; and allow the CDQ observer on some catcher vessels to monitor the delivery in the shoreside processing plant.

These reductions in observer coverage requirements for the CDQ fisheries are being made under an inseason adjustment allowed under 50 CFR 679.50(e). This regulation allows the Administrator, Alaska Region, NMFS (Regional Administrator), to adjust the observer coverage requirements in 50 CFR 679.50(c) and (d) to improve the accuracy, reliability, and availability of observer data as long as changes are based on a finding that: (1) fishing methods, times, areas, or catch or bycatch composition for a specific fishery or fleet component have changed significantly, or are likely to change significantly; or (2) such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

NMFS finds that the second condition is applicable in this case. These reductions in observer coverage requirements are necessary to improve data availability in order to meet specific fishery management objectives for the CDQ Program for the following reasons. 1999 was the first full year of fishing under new requirements for CDQ observers who have prior experience and additional training, and for lead CDQ observers who have prior experience on vessels with specific gear types or in shoreside processing plants. Some vessels and processors had difficulty obtaining CDQ observers that met the criteria as a lead CDQ observer for the particular vessel or processor type. When an observer is not available, the vessel operator or processing plant manager must decide between not fishing or taking a delivery when they want to, or not complying with the observer coverage requirements. An inseason adjustment to observer coverage requirements in the CDQ fisheries will reduce the need for lead CDQ observers for some vessels and processors, thereby increasing the availability of CDQ observers for all CDQ fisheries and increasing the flexibility of the observer contractors in selecting observers for deployment in the CDQ fisheries. Also, this action will reduce the possibility that vessels and processors participating in the CDQ fisheries will do so without the required observer coverage.

NMFS is developing proposed rulemaking that would permanently implement these reductions in future years. However, it is unlikely that this rulemaking would be implemented until late in 2000. An inseason adjustment would accomplish the recommended reductions in observer coverage and improve the chances of obtaining quality data to manage the CDQ fisheries in 2000. Therefore, in accordance with § 679.50(e), the Regional Administrator makes the following adjustments in observer coverage and experience requirements:

1. The requirement for a lead CDQ observer on all catcher vessels using trawl gear will be reduced to require only a CDQ observer. This reduction is justified because the vessel must retain all groundfish CDQ and salmon prohibited species quota (PSQ) and deliver it to a shoreside processor, where it is sorted by species, weighed, and reported to NMFS. The observer on the vessel estimates the at-sea discards of halibut PSQ and crab PSQ and monitors compliance with retention requirements. NMFS believes that these duties can be performed adequately by a CDQ observer who has prior observing experience and that the vessel-specific experience is not necessary.

2. The requirement for a lead CDQ observer on a catcher vessel using nontrawl gear and choosing to retain all groundfish CDQ species (Option 1 defined at 50 CFR 679.32(c)(2)(ii)(A)) will be reduced to require only a CDQ observer. Catcher vessels ≥ 60 ft (18.3 m) LOA using nontrawl gear may select one of two options as the basis for CDQ catch accounting. Option 1 requires the vessel operator to retain all CDQ species and deliver them to a processor where they are sorted by species, weighed, and reported to NMFS. Under this option, CDQ catch accounting is based on the processor's reports for groundfish CDQ on the observer data for halibut PSQ. NMFS believes the gear specific experience of a lead-CDQ observer is unnecessary. NMFS will continue to require a lead CDQ observer on catcher vessels using nontrawl gear that choose to use observer data as the basis for all CDQ catch accounting (Option 2 defined at 50 CFR 679.32(c)(2)(ii)(B)).

3. The requirement for a CDQ observer of any type at the shoreside plant to monitor deliveries from catcher vessels using nontrawl gear and selecting Option 2 would be removed entirely. Under Option 2, only data collected by the observer on the catcher vessel is used for CDQ catch accounting. Therefore, a lead CDQ observer or a CDQ observer is not necessary at the plant to monitor the sorting and weighing of the CDQ delivery.

4. The requirement for a lead CDQ observer in a shoreside processing plant to monitor CDQ deliveries, except deliveries from catcher vessels using nontrawl gear and selecting Option 2, would be reduced to require only a CDQ observer. NMFS has determined that experience in a shoreside plant is not necessary for the observer to adequately monitor the sorting and weighing of CDQ deliveries.

5. The observer coverage requirements for shoreside processors taking CDQ deliveries from catcher vessels equal to or greater than 60 feet (18.3 m) length overall (LOA) using nontrawl gear and using Option 1 (full retention) for CDQ catch accounting will be reduced to allow the vessel observer to monitor the CDQ delivery in the processing plant. A separate CDQ observer for the shoreside processor is not necessary if the vessel observer can monitor the sorting and weighing of catch at the shoreside processor without exceeding the statutory working hour limits. Under this revision, the shoreside processor could still choose to provide an additional observer at the processing plant if the shoreside processor did not want its activities to be limited by the working hour limits for the vessel observer.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS anticipates increased noncompliance with observer coverage requirements and an overall reduction in the level and quality of observer data. This impact is undesirable and potentially detrimental to the management of the North Pacific groundfish fisheries. Further, the interim adjustment relieves a restriction on affected industry members. Under §§ 679.50(e) and 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 9, 2000. This action is authorized by §§ 679.50 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 16, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–4252 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 36
Wednesday, February 23, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–45–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F turbofan engines. This proposal would require initial and repetitive visual inspections of left hand and right hand aft engine mount link assemblies for separations, cracks and spherical bearing race migration. Cracked or separated parts must be replaced prior to further flight. If spherical bearing race migration is discovered, an additional borescope inspection for cracks is also proposed. If no cracks are discovered in the additional borescope inspection, assemblies have a 75-cycle grace period for remaining in service before replacement. Finally, installation of improved aft engine mount link assemblies constitutes terminating action to the inspections of this AD. This proposal is prompted by a report of a fractured left-hand aft engine mount link discovered during a scheduled removal of an engine of similar design. The actions specified by the proposed AD are intended to prevent aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure.

DATES: Comments must be received by April 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9–ane–adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone 513–672–8400, fax 513–672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7742, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

In September 1997, the Federal Aviation Administration (FAA) received a report of a fractured General Electric Company (GE) CF6–80A3 series aft engine mount link found during a scheduled engine removal on an Airbus Industrie A310 series aircraft. Recent inspections revealed migrated spherical bearing races on two CF6–80A3 series and ten CF6–80C2 series aft engine mount links. Aft engine mount link spherical bearing race migration adversely affects link fatigue life. This condition, if not corrected, could result in aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure.

Service Information

The FAA has reviewed and approved the technical contents of GE CF6–80C2 Alert Service Bulletin (ASB) 72–A0989, dated January 19, 2000, that describes the aft engine mount link replacement. The FAA has also reviewed and approved the technical contents of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000, that describes procedures for visual inspections of existing left hand and right hand aft engine mount link assemblies for separations, cracks, and spherical bearing race migration, and provides rejection criteria.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require initial and repetitive visual inspections of left hand and right hand aft engine mount link assemblies for separations, cracks, and spherical bearing race migration. If spherical bearing race migration is discovered, a borescope inspection for cracks is also proposed. Aft engine mount link assemblies found cracked or separated must be replaced with serviceable parts prior to further flight. Aft engine mount link assemblies discovered with spherical bearing race migration may remain in service for another 75 cycles-in-service (CIS) following borescope inspection prior to replacement with serviceable parts. Finally, this AD would require the replacement of left hand and right hand aft engine mount link assemblies with improved design assemblies at the next engine shop visit, or prior to accumulating 29,000 engine cycles since new (CSN), whichever occurs first. Replacing the assemblies would constitute terminating action to the repetitive inspections. These actions would be required to be accomplished in accordance with the ASBs described previously.

Economic Analysis

There are approximately 975 engines of the affected design in the worldwide fleet. The FAA estimates that 323 engines installed on aircraft of US registry would be affected by this proposed AD. The cost to replace link assemblies is approximately $7,000. The FAA estimates that it would take approximately 0.5 work hours per engine to accomplish each of an average of two interim inspections prior to next engine shop visit and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $2,280,380.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order (EO) No.13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under EO No. 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 99–NE–45–AD.

Applicability: General Electric Company (GE) Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F turbofan engines, with left hand aft engine mount link assemblies, part numbers (P/Ns) 9348M79G01 or 9348M79G02 installed, or right hand aft engine mount link assemblies, P/Ns 9348M84G01 or 9348M84G02 installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, and McDonnell Douglas MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure, accomplish the following:

Initial Inspection

(a) Inspect aft engine mount link assemblies as follows:

Not Previously Inspected

• Within 400 cycles-in-service (CIS) after the effective date of this AD, if not previously inspected using GE CF6–80C2 Alert Service Bulletin (ASB) 72–A0964, Revision 2, dated January 24, 2000, Revision 1, dated November 12, 1999, or Original, dated April 16, 1999, or

Previously Inspected

• Within 400 cycles-since-last-inspection (CSLI), if previously inspected using GE CF6–80C2 Alert Service Bulletin (ASB) 72–A0964, Revision 2, dated January 24, 2000, Revision 1, dated Month Day, Year, or Original, dated Month Day, Year, GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000.

(1) Visually inspect for:

• Separations,
• Cracks, and
• Spherical bearing race migration.

(2) Inspect in accordance with the Accomplishment Instructions of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000.

Cracked or Separated Parts

(3) If a crack or separation is discovered, prior to further flight:

• Remove the cracked or separated aft engine mount link assembly and the attaching hardware from service, and
• Replace with serviceable parts.

Removal of Aft Engine Mount Link Assemblies With Spherical Bearing Race Migration

(4) If an aft engine mount link assembly is found with spherical bearing race migration, but no cracks or separations, prior to further flight, either

Removal

(i) Remove the aft engine mount link assembly and the attaching hardware from service and replace with serviceable parts, or

Additional Borescope Inspection of Aft Engine Mount Link Assemblies With Spherical Bearing Race Migration

(ii) Perform an additional borescope inspection for cracks in accordance with paragraph (3)(I) of the Accomplishment Instructions of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000.

After Additional Borescope Inspection, if Parts Are Cracked

(A) If a crack indication is discovered, prior to further flight,

• Remove the cracked aft engine mount link assembly and the attaching hardware from service, and
• Replace with serviceable parts.

After Additional Borescope Inspection, if Parts Are Not Cracked (Grace Period)

(B) If crack indications are not discovered, within 75 CIS after the inspection performed in accordance with paragraph (a)(4)(ii) of this AD:

• Remove the aft engine mount link assembly from service, and
• Replace with serviceable parts.

Attaching Hardware

(iii) Attaching hardware may be returned to service after inspection in accordance with paragraph 3(I)(1)(d) or 3(I)(2)(d) of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000, as applicable, only if visual inspection of the removed link shows no cracks or separations.

Note 2: Link attaching hardware include the nuts, bolts and washers that secure the link.

Repetitive Inspections

(b) Thereafter, perform the actions required by paragraph (a) and associated subparagraphs at intervals not to exceed 400 CSLI.

Replacement With Improved Link Assemblies

(c) Replace aft engine mount link assemblies with improved aft engine mount link assemblies at:
• The next engine shop visit (ESV), or
• Prior to accumulating 29,000 engine cycles since new (CSN), whichever occurs first.

(1) Replace in accordance with the Accomplishment Instructions of CF6–80C2 ASB 72–A0989, dated January 19, 2000.

Left Hand Aft Engine Mount Link Assemblies

(2) Replace left-hand aft engine mount link assemblies, P/Ns 9348M79G01 or 9348M79G02, with improved left-hand aft engine mount link assemblies, P/N 1846M23G01.

Right Hand Aft Engine Mount Link Assemblies

(3) Replace right hand aft engine mount link assemblies, P/Ns 9348M84G01 or 9348M84G02, with improved right hand aft engine mount link assemblies, P/N 9348M84G03.

Terminating Action

(4) Installation of improved aft engine mount link assemblies in accordance with paragraph (c) and its subparagraphs constitutes terminating action to the inspections required by paragraphs (a) and (b) of this AD.

Alternate Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 15, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–4263 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–36–AD]

Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters. This proposal would require replacing certain circuit breakers. This proposal is prompted by the discovery of the loss of electrical continuity between the terminals of an installed circuit breaker. The actions specified by the proposed AD are intended to prevent loss of electrical power to the emergency flotation gear or other optional installations and subsequent loss of the helicopter emergency flotation capability.

DATES: Comments must be received on or before April 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–36–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters. The DGAC advises of the

loss of electrical continuity on certain single-pole circuit breakers.

Eurocopter France has issued Service Bulletin No. 01.00.44, applicable to Model AS355E, F, F1, F2, and N helicopters and Service Bulletin No. 01.00.47, applicable to Model AS350B, BA, B1, B2, B3, and D helicopters. Both service bulletins are dated November 10, 1998, and specify inspecting Crouzet single-pole circuit breakers, part number (P/N) 84 400 028 or P/N 84 400 031 through P/N 84 400 036, installed as part of the emergency flotation gear or other optional installations. The service bulletins also specify replacing any circuit breaker that is not operating properly and replacing all affected circuit breakers at the next ''T'' inspection or 6 months, whichever occurs first. The DGAC classified these service bulletins as mandatory and issued AD 98–510–055(A) and AD 98–511–074(A), both dated December 16, 1998, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters of the same type designs registered in the United States, the proposed AD would require the following:

- Inspecting Crouzet single-pole circuit breakers, P/N 84 400 028, or P/N 84 400 031 through P/N 84 400 036, installed as part of the emergency flotation gear or other optional installations, for proper operation. Replacing any Crouzet single-pole circuit breaker that is not operating properly with an airworthy circuit breaker.
- Replacing all Crouzet single-pole circuit breakers, P/N 84 400 028, or P/N 84 400 031 through P/N 84 400 036 with airworthy circuit breakers would be required on or before July 1, 2000.

The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 150 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.25 work hours per helicopter to replace the circuit breakers, and that the average labor rate is $60 per work hour. Required parts would cost approximately $23 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,700, assuming the replacement of 150 circuit breakers.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–36–AD.

Applicability: Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters, with Crouzet single-pole circuit breaker, part numbers (P/N) 84 400 028, and P/N 84 400 031 through P/N 84 400 036, installed as part of any optional installations, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the emergency flotation gear or other optional installations and subsequent loss of the helicopter emergency flotation capability, accomplish the following:

(a) On or before 200 hours time-in-service or within the next 3 calendar months, whichever occurs first:

(1) For Model AS350B, BA, B1, B2, B3, and D helicopters, inspect and if inoperable, replace the Crouzet single-pole circuit breakers installed in the flotation gear unit assembly and other optional installations for electrical continuity in accordance with section 2.B. of the Accomplishment Instructions contained in Eurocopter France Service Bulletin (SB) No. 01.00.47, dated November 10, 1998, except disregard the compliance times stated in paragraph 2.B.2) of the SB.

(2) For Model AS355E, F, F1, F2, and N helicopters, inspect and if inoperable, replace the Crouzet single-pole circuit breakers installed in the flotation gear unit assembly and other optional installations for electrical continuity in accordance with section 2.B. of the Accomplishment Instructions contained in SB No. 01.00.44, dated November 10, 1998, except disregard the compliance times stated in paragraph 2.B.2) of the SB.

(b) On or before July 1, 2000, replace all Crouzet single-pole circuit breakers in accordance with section 2.B. of the Accomplishment Instructions of the applicable SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA.

Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–510–055(A) for the Model AS 355 helicopters and AD 98–511–074(A) for the Model AS 350 helicopters. Both DGAC AD's are dated December 16, 1998.

Issued in Fort Worth, Texas, on February 11, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4264 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–11]

RIN 2120–AA66

Proposed Alteration of Federal Airways; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on October 5, 1998. The FAA proposed to realign Federal airways in the State of Colorado. The FAA has determined that withdrawal of the proposed rule is warranted because the existing air traffic control (ATC) operational procedures are suitable.

DATES: The proposed rule is withdrawn on February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On October 5, 1998, an NPRM was published in the **Federal Register** proposing to amend 14 CFR part 71 to modify Federal airways in Colorado (63 FR 53325). Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the proposal. No comments were received on the proposal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 98–ANM–11, as published in the **Federal Register** on October 5, 1998 (63 FR 53325), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on February 16, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–4225 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–7801, 34–42430; International Series No. 1215; File No. S7–04–00]

[RIN: 3235–AH65]

International Accounting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comment.

SUMMARY: With the activities and interests of investors, lenders and companies becoming increasingly global, the Commission is increasing its involvement in a number of forums to develop a globally accepted, high quality financial reporting framework. Our efforts, at both a domestic and international level, consistently have been based on the view that the only way to achieve fair, liquid and efficient capital markets worldwide is by providing investors with information that is comparable, transparent and reliable. That is why we have pursued a dual objective of upholding the quality of financial reporting domestically, while encouraging convergence towards a high quality global financial reporting framework internationally. In this release, we are seeking comment on the necessary elements of such a framework, as well as on ways to achieve this objective. One aspect of this is seeking input to determine under what conditions we should accept financial statements of foreign private issuers that are prepared using the standards promulgated by the International Accounting Standards Committee.

DATES: Comments should be received on or before May 23, 2000.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–04–00; you should include this file number in the subject line if e-mail is used. Comment letters can be inspected and copied in our public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549–0102. We will post electronically submitted comments on our Internet Web site at www.sec.gov.

FOR FURTHER INFORMATION CONTACT: Sandra Folsom Kinsey, Senior International Counsel, Division of Corporation Finance at (202) 942–2990, or D.J. Gannon, Professional Accounting Fellow, Office of the Chief Accountant at (202) 942 4400.

SUPPLEMENTARY INFORMATION:

I. Introduction and Purpose of This Release

Over the last two decades, the global financial landscape has undergone a significant transformation. These developments have been attributable, in part, to dramatic changes in the business and political climates, increasing global competition, the development of more market-based economies, and rapid technological improvements. At the same time, the world's financial centers have grown increasingly interconnected.

Corporations and borrowers look beyond their home country's borders for capital. An increasing number of foreign companies routinely raise or borrow capital in U.S. financial markets, and U.S. investors have shown great interest in investing in foreign enterprises. This globalization of the securities markets has challenged securities regulators around the world to adapt to meet the needs of market participants while maintaining the current high levels of investor protection and market integrity.

Our efforts to develop a global financial reporting framework have been

guided by the cornerstone principle underlying our system of regulation—pursuing our mandate of investor protection by promoting informed investment decisions through full and fair disclosure. Financial markets and investors, regardless of geographic location, depend on high quality information in order to function effectively. Markets allocate capital best and maintain the confidence of the providers of capital when the participants can make judgments about the merits of investments and comparable investments and have confidence in the reliability of the information provided.

Because of increasing cross-border capital flows, we and other securities regulators around the world have an interest in ensuring that high quality, comprehensive information is available to investors in all markets. We stated this view in 1988, when we issued a policy statement that noted that ''all securities regulators should work together diligently to create sound international regulatory frameworks that will enhance the vitality of capital markets.'' [1] We have applied this approach in a number of instances, including our recent adoption of the International Disclosure Standards developed by the International Organization of Securities Commissions (IOSCO) for non-financial statement information.[2] Our decision to adopt the International Disclosure Standards was based on our conclusion that the standards were of high quality and that their adoption would provide information comparable to the amount and quality of information that U.S. investors receive today.

Currently, issuers wishing to access capital markets in different jurisdictions must comply with the requirements of each jurisdiction, which differ in many respects. We recognize that different listing and reporting requirements may increase the costs of accessing multiple capital markets and create inefficiencies in cross-border capital flows. Therefore, we are working with other securities regulators around the world to reduce these differences. To encourage the development of accounting standards to be considered for use in cross-border filings, we have been working primarily through IOSCO, and focusing on the work of the International Accounting Standards Committee (IASC). Throughout this effort, we have been steadfast in advocating that capital markets operate most efficiently when investors have access to high quality financial information.

However, ensuring that high quality financial information is provided to capital markets does not depend solely on the body of accounting standards used. An effective financial reporting structure begins with a reporting company's management, which is responsible for implementing and properly applying generally accepted accounting standards. Auditors then have the responsibility to test and opine on whether the financial statements are fairly presented in accordance with those accounting standards. If these responsibilities are not met, accounting standards, regardless of their quality, may not be properly applied, resulting in a lack of transparent, comparable, consistent financial information.

Accordingly, while the accounting standards used must be high quality, they also must be supported by an infrastructure that ensures that the standards are rigorously interpreted and applied, and that issues and problematic practices are identified and resolved in a timely fashion. Elements of this infrastructure include:

- Effective, independent and high quality accounting and auditing standard setters;
- High quality auditing standards;
- Audit firms with effective quality controls worldwide;
- Profession-wide quality assurance; and
- Active regulatory oversight.

In this release, we discuss a number of issues related to the infrastructure for high quality financial reporting. We solicit views on the elements necessary for developing a high quality, global financial reporting framework for use in cross-border filings. We believe these issues should be considered in the development of any proposals to modify current requirements for enterprises that report using IASC standards because our decisions should be based on the way the standards actually are interpreted and applied in practice.

We recognize that each of the elements of the infrastructure may be at different stages of development and that decisions and progress on some of these infrastructure issues may be independent of the body of accounting standards used.

II. Elements of a High Quality Global Financial Reporting Structure

A. High Quality Accounting Standards

High quality accounting standards are critical to the development of a high quality global financial reporting structure. Different accounting traditions have developed around the world in response to varying needs of users for whom the financial information is prepared. In some countries, for example, accounting standards have been shaped primarily by the needs of private creditors, while in other countries the needs of tax authorities or central planners have been the predominant influence. In the United States, accounting standards have been developed to meet the needs of participants in the capital markets.

U.S. accounting standards provide a framework for reporting that seeks to deliver transparent, consistent, comparable, relevant and reliable financial information. Establishing and maintaining high quality accounting standards are critical to the U.S. approach to regulation of capital markets, which depends on providing high quality information to facilitate informed investment decisions.

High quality accounting standards consist of a comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions. High quality accounting standards are essential to the efficient functioning of a market economy because decisions about the allocation of capital rely heavily on credible and understandable financial information.

When issuers prepare financial statements using more than one set of accounting standards, they may find it difficult to explain to investors the accuracy of both sets of financial statements if significantly different operating results, financial positions or cash flow classifications are reported under different standards for the same period. Questions about the credibility of an entity's financial reporting are likely where the differences highlight how one approach masks poor financial performance, lack of profitability, or deteriorating asset quality.

The efficiency of cross-border listings would be increased for issuers if preparation of multiple sets of financial information was not required. However, the efficiency of capital allocation by investors would be reduced without consistent, comparable, relevant and reliable information regarding the financial condition and operating performance of potential investments. Therefore, consistent with our investor protection mandate, we are trying to increase the efficiency of cross-border capital flows by seeking to have high

[1] Regulation of International Securities Markets, Securities Act Release No. 6807 (November 14, 1988) [53 FR 46963].

[2] International Disclosure Standards, Exchange Act Release No. 41936 (September 28, 1999) [64 FR 53900].

quality, reliable information provided to capital market participants.

B. High Quality Auditing Standards

The audit is an important element of the financial reporting structure because it subjects information in the financial statements to independent and objective scrutiny, increasing the reliability of those financial statements. Trustworthy and effective audits are essential to the efficient allocation of resources in a capital market environment, where investors are dependent on reliable information.

Quality audits begin with high quality auditing standards. Recent events in the United States have highlighted the importance of high quality auditing standards and, at the same time, have raised questions about the effectiveness of today's audits and the audit process.[3] We are concerned about whether the training, expertise and resources employed in today's audits are adequate.

Audit requirements may not be sufficiently developed in some countries to provide the level of enhanced reliability that investors in U.S. capital markets expect. Nonetheless, audit firms should have a responsibility to adhere to the highest quality auditing practices—on a world-wide basis—to ensure that they are performing effective audits of global companies participating in the international capital markets. To that end, we believe all member or affiliated firms performing audit work on a global audit client should follow the same body of high quality auditing practices even if adherence to these higher practices is not required by local laws.[4] Others have expressed similar concerns.[5]

C. Audit Firms With Effective Quality Controls

Accounting and auditing standards, while necessary, cannot by themselves ensure high quality financial reporting. Audit firms with effective quality controls are a critical piece of the financial reporting infrastructure. Independent auditors must earn and maintain the confidence of the investing public by strict adherence to high quality standards of professional conduct that assure the public that auditors are truly independent and perform their responsibilities with integrity and objectivity. As the U.S. Supreme Court has stated: ''It is not enough that financial statements be accurate; the public must also perceive them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional * * *''[6] In addition, audit firms must ensure that their personnel comply with all relevant professional standards.

The quality control policies and procedures applicable to a firm's accounting and auditing practice should include elements such as:[7]

- Independence, integrity and objectivity;
- Personnel management, including proper training and supervision;
- Acceptance and continuance of clients and engagements;
- Engagement performance; and
- Monitoring.

A firm's system of quality control should provide the firm and investors with reasonable assurance that the firm's partners and staff are complying with the applicable professional standards and the firm's standards of quality.

Historically, audit firms have developed internal quality control systems based on their domestic operations. However, as clients of audit firms have shifted their focus to global operations, audit firms have followed suit and now operate on a world-wide basis. Therefore, quality controls within audit firms that rely on separate national systems may not be effective in a global operating environment. We are concerned that audit firms may not have developed and maintained adequate internal quality control systems at a global level.[8]

D. Profession-Wide Quality Assurance

The accounting profession should have a system to ensure quality in the performance of auditing engagements by its members. Necessary elements of the system include:

- Providing continuing education and training on recent developments;
- Providing an effective monitoring system to ensure that:
  - —Firms comply with applicable professional standards;
  - —Firms have reasonable systems of quality control;
  - —There is an in-depth, substantive and timely study of firms' quality controls, including reviews of selected engagements;
  - —Deficiencies and/or opportunities for improvements in quality controls are identified; and
  - —Results of monitoring are communicated adequately to the appropriate parties.
- Providing an effective and timely disciplinary process when individuals or firms have not complied with applicable firm or professional standards.

In some jurisdictions the local accounting profession may have a system of quality assurance. However, structures focused on national organizations and geographic borders do not seem to be effective in an environment where firms are using a number of affiliates to audit enterprises in an increasingly integrated global environment.

E. Active Regulatory Oversight

The U.S. financial reporting structure has a number of separate but interdependent elements, including active regulatory oversight of many of these elements, such as registrants' financial reporting, private sector standard-setting processes and self-regulatory activities undertaken by the accounting profession. Each of these elements is essential to the success of a high quality financial reporting framework. This oversight reinforces the development of high quality accounting and auditing standards and focuses them on the needs of investors. It provides unbiased third party scrutiny of self-regulatory activities. Regulatory oversight also reinforces the application of accounting standards by registrants and their auditors in a rigorous and consistent manner and assists in ensuring a high quality audit function.

[3] We have asked the Public Oversight Board to study the effectiveness of audits. *See* ''The Numbers Game''—Remarks of Chairman Arthur Levitt at the N.Y.U. Center for Law and Business, New York, NY, September 28, 1998 and ''Remarks to the Panel on Audit Effectiveness of the Public Oversight Board'' by Chairman Arthur Levitt, New York, NY, October 7, 1999, both available on the SEC website at <www.sec.gov>.

[4] *See* ''Quality Information: The Lifedblood of Our Markets'' remarks of Chairman Arthur Levitt at the Economics Club of New York, New York, NY, October 18, 1999, available on the SEC web site at <www.sec.gov>.

[5] *See* ''World Bank Warns Big Give Over Global Audit Standards,'' *Financial Times*, October 19, 1998, page 1.

[6] *United States* v. *Arthur Young & Co.,* 465 U.S. 805, 819 (1984).

[7] *See* the discussion of the elements of quality control of an audit firm's practice in Statement of Quality Control standard section 20.07, published by the American Institute of Certified Public Accountants' (AICPA's) Auditing Standards Board.

[8] *See* for example, 34–40945, AAER–1098 (PricewaterhouseCoopers) and letters from the SEC Chief Accountant to the AICPA SEC Practice Section dated November 30, 1998, and December 9, 1999 regarding the need for global quality internal controls over independence matters, available on the SEC website at <www.sec.gov>. We have asked the Public Oversight Board to sponsor reviews at other accounting firms and to oversee development of enhnacements to quality controls and other professional standards to address this concern.

III. Background on Efforts To Reduce Barriers to Cross-Border Capital Flows

A. Foreign Private Issuers—The Current Requirements

The Securities Act of 1933 [9] and the Securities Exchange Act of 1934 [10] establish the disclosure requirements for public companies in the United States. The form and content requirements for financial statements filed with the Commission are set forth in Regulation S–X. [11] This framework establishes the initial and continuing disclosures that companies must make if they wish to offer securities in the United States or have their securities traded publicly on an exchange or quoted on the Nasdaq stock market. [12]

Our current financial statement requirements for foreign private issuers parallel those for U.S. domestic issuers, except that foreign private issuers may prepare financial statements in accordance with either U.S. generally accepted accounting principles (U.S. GAAP) or with another comprehensive body of accounting standards (including IASC standards). A foreign private issuer using accounting standards other than U.S. GAAP must provide an audited reconciliation to U.S. GAAP.[13]

There are some exceptions to this reconciliation requirement. For example, we have amended our requirements for financial statements of foreign private issuers to permit use of certain IASC standards without reconciliation to U.S. GAAP. [14] These are:

- Use of International Accounting Standard (IAS) 7, *Cash Flow Statements* (as amended in 1992) for the preparation of a statement of cash flows;
- Acceptance of portions of IAS 22, *Business Combinations* (as amended in 1993), regarding the method of accounting for a business combination and the determination of the amortization period for goodwill and negative goodwill; and
- Acceptance of portions of IAS 21, *The Effects of Changes in Foreign Exchange Rates* (as amended in 1993), regarding translation of amounts stated in a currency of an entity in a hyperinflationary economy.

By requiring a U.S. GAAP reconciliation, with the exceptions noted above, we do not seek to establish a higher or lower disclosure standard for foreign companies than for domestic companies. Rather, the objective of this approach is to protect the interests of U.S. investors by requiring that all companies accessing U.S. public markets provide high quality financial reporting that satisfies the informational needs of investors, without requiring use of U.S. standards in the presentation of that information.[15]

The U.S. GAAP reconciliation requirement requires foreign issuers to supplement their home country financial statements. The total number of foreign reporting companies increased from 434 in 1990 to approximately 1,200 currently.

B. Towards Convergence of Accounting Standards in a Global Environment

In the past, different views of the role of financial reporting made it difficult to encourage convergence of accounting standards. Now, however, there appears to be a growing international consensus that financial reporting should provide high quality financial information that is comparable, consistent and transparent, in order to serve the needs of investors. Over the last few years, we have witnessed an increasing convergence of accounting practices around the world. A number of factors have contributed to this convergence. First, large multinational corporations have begun to apply their home country standards, which may permit more than one approach to an accounting issue, in a manner consistent with other bodies of standards such as IASC standards or U.S. GAAP. Second, the IASC has been encouraged to develop standards that provide transparent reporting and can be applied in a consistent and comparable fashion worldwide. Finally, securities regulators and national accounting standard-setters are increasingly seeking approaches in their standard-setting processes that are consistent with those of other standard-setters.[16] Some national standard-setters are participating in multinational projects, such as those on accounting for business combinations, in order to draw on a broader range of comment about an issue.

If convergence of disclosure and accounting standards contributes to an increase in the number of foreign companies that publicly offer or list securities in the U.S. capital markets, investors in the United States would benefit from increased investment opportunities and U.S. exchanges would benefit from attracting a greater number of foreign listings. Although the U.S. markets have benefited greatly from the high quality financial reporting that U.S. GAAP requires, current disparities in accounting practices may be a reason foreign companies do not list their securities on U.S. exchanges. As Congress has recognized,

> [E]stablishment of a high quality comprehensive set of generally accepted international accounting standards would greatly facilitate international financing activities and, most importantly, would

[9] 15 U.S.C. 77a *et seq.* (Securities Act).

[10] 15 U.S.C. 78a *et seq.* (Exchange Act).

[11] 17 CFR 210.1–01 *et seq.*

[12] In addition to exchange and Nasdaq traded securities, which are required to be registered, the securities of many unregistered foreign issuers trade in the over-the-counter markets in the United States. Unregistered companies are not required to file periodic reports with the Commission or reconcile their financial statements to U.S. generally accepted accounting principles.

[13] Items 17(c) and 18(c) of Form 20–F permit a foreign private issuer to provide financial statements prepared in accordance with another comprehensive basis of accounting, provided that the issuer also provides a reconciliation of net income and balance sheet items to U.S. GAAP. Domestic issuers are required to file financial statements prepared in accordance with U.S. GAAP. Rule 4–01(a)(2) of Regulation S–X, 17 CFR 210.4–01(a)(2). All financial statements must be audited in accordance with U.S. generally accepted auditing standards (Rule 2–02(b) of Regulation S–X, 17 CFR 210.2–02(b)) by an auditor satisfying the U.S.. independence requirements (Rule 2–01 of Regulation S–X, 17 CFR 210.2–01.

We are not considering modifying the requirement that financial statements filed with the Commission be audited in accordance with U.S generally accepted auditing standards. We note, however, that IOSCO currently is exploring furtehr work on improving auditing requirments. Current auditing practices in the United States are under review by the Panel on Audit Effectiveness, sponsored by the AICPA Public Oversight Board. We also are not considering modifying the requirement that auditors comply with U.S. independence requirments.

[14] *See* Items 17 and 18 of Form 20–F for a description of the relief from reconciliatin provided to financial statements prepared using IASC standards or standards that are consistent with IASC standards. 17 CFR 249.220f.

[15] *See* Grace Pownall and Katherine Shipper, ''Implications of Accounting Research for the SEC's Consideration of International Accounting Standards for U.S. Securities Offerings'' in *Accounting Horizons*, September 1999. Among other things, this paper describes selected academic research that addresses the unsefulness to U.S. investors of non-U.S. GAAP reports and U.S. GAAP reconciliations. Pownall and Schipper point to research that suggest that higher net income often is reported under the current IASC standards than under U.S. GAAP. This paper also cites research that suggests that financial statements prepared using IASC standards are not seen as substitutes for U.S. GAAP performance measures by U.S. investors.

[16] *See*, for example, the ''FASB's Plan for International Activities,'' February 1997, that includes ''Continu[ing] to consider foreign national and IASC standards in FASB project[s]'' and ''Cooperat[ing] directly with other standard-setting organizations to resolve specific issues and to work toward reducing differences in accounting standards between nations.'' Additionally, the FASB has undertaken joint projects with other standard setters, for example, on segments and earnings per share. Also, standard setters from the United States, Canada, Australia, New Zealand and the United Kingdom have worked with the IASC through the ''G–4+1'' group to debate current agenda items and coordinate standard setting efforts.

enhance the ability of foreign corporations to access and list in the United States markets.[17]

These concerns are offset by significant benefits realized by companies reporting under U.S. GAAP, as a result of improvements in the quality of information available to both management and shareholders as a result of reporting under U.S. GAAP.[18] It is important that convergence does not sacrifice key elements of high quality financial reporting that U.S. investors enjoy currently. Investors benefit when they have the ability to compare the performance of similar companies regardless of where those companies are domiciled or the country or region in which they operate.

Over the years, we have realized that foreign companies make their decisions about whether to offer or list securities in the United States for a variety of economic, financial, political, cultural and other reasons. Many of these reasons are unrelated to U.S. regulatory requirements.[19] However, some foreign companies cite, among other reasons, a reluctance to adopt U.S. accounting practices as a reason for not listing in the United States. These companies have indicated that they have forgone listing in the United States rather than follow accounting standards that they have not helped formulate. Therefore, accepting financial statements prepared using IASC standards without requiring a reconciliation to U.S. GAAP could be an inducement to cross-border offerings and listings in the United States.

On the other hand, other factors could continue to deter foreign access to the U.S. markets. For example, some foreign companies have expressed concern with the litigation exposure and certain public disclosure requirements that may accompany entrance into the U.S. markets.[20] Foreign companies also may be subject to domestic pressure to maintain primary listings on home country stock exchanges.

[17] National Securities Market Improvements Act of 1996.

[18] *See* Louis Lowenstein, ''Financial Transparency and Corporate Governance: You Manage What You Measure,'' *Columbia Law Review,* Volume 98, No. 5 (June 1996).

''* * * Senior officers of Ciba Geigy Limited and The Holderbank Group report a long list of managerial gains from improved financial disclosure [footnote omitted]. Divisions now report on a consistent basis, there is a more rational allocation of costs, and expenses are no longer charged to surplus. In short, they have found it easier to manage the company * * *'' (p. 1357).

[19] James A. Fanto and Roberta S. Karmel, ''A Report on the Attitudes of Foreign Companies Regarding a U.S. Listing,'' *Stanford Journal of Law, Business and Finance,* Summer 1997, Vol 3 No. 1 pg. 51–83.

[20] *See* Fanto and Karmel, *id.*

C. Development of the Core Standards Project

After studying issues relating to international equity flows, IOSCO noted that development of a single disclosure document for use in cross-border offerings and listings would be facilitated by the development of internationally accepted accounting standards. Rather than attempt to develop those standards itself, IOSCO focused on the efforts of the IASC. In 1993, IOSCO identified for the IASC what IOSCO believed to be the necessary components of a core set of standards that would comprise a comprehensive body of accounting principles for enterprises making cross-border securities offerings. IOSCO later identified a number of issues relating to the then-current IASC standards. The IASC then prepared a work plan designed to address the most significant issues identified by IOSCO—the ''core standards'' work program. In 1995, IOSCO and the IASC announced agreement on this work program, and IOSCO stated that if the resulting core standards were acceptable to IOSCO's Technical Committee, that group would recommend endorsement of the IASC standards. The focus of IOSCO's involvement in the core standards project is on use of IASC standards by large, multinational companies for cross-border capital-raising and listing.[21]

IV. Major Issues To Be Addressed in Our Assessment of the IASC Standards

A. Criteria for Assessment of the IASC Standards

In an April 1996 statement regarding the IASC core standards project, we indicated that, once the IASC completed its project, we would consider allowing use of the resulting standards in cross-border filings by foreign issuers offering securities in the United States.[22] The three criteria set forth in that statement remain the criteria that will guide our assessment of the IASC standards. We request your views on whether the IASC standards:

1. Constitute a comprehensive, generally accepted basis of accounting;
2. Are of high quality; and
3. Can be rigorously interpreted and applied.

In responding to the requests for comment set forth below, please be specific in your response, explaining in detail your experience, if any, in applying IASC standards, and the factors you considered in forming your opinion. Please consider both our mandate for investor protection and the expected effect on market liquidity, competition, efficiency and capital formation.

IASC standards are published and copyrighted by the IASC, and we can not reproduce those standards as part of this release. However, copies of the standards have been placed in our public reference rooms. The IASC also has summaries of each standard available on its website at <www.iasc.org.uk>. A listing of the IASC standards and their effective dates is included as Appendix B. For your convenience, a listing of questions 1–26 is included as Appendix A.

1. Are the Core Standards Sufficiently Comprehensive?

The goal of the core standards project was to address the necessary components of a reasonably complete set of accounting standards that would comprise a comprehensive body of principles for enterprises undertaking cross-border offerings and listings. In developing the work program for the core standards project, IOSCO specified the minimum components of a set of ''core standards'' and identified issues to be addressed by the IASC.[23] For topics outside the core standards, such as industry-specific accounting standards, it was agreed that IOSCO members either would accept ''home country'' treatment or require specific ''host country'' treatment or equivalent disclosure.

Q. 1 Do the core standards provide a sufficiently comprehensive accounting framework to provide a basis to address the fundamental accounting issues that are encountered in a broad range of industries and a variety of transactions without the need to look to other accounting regimes? Why or why not?

Q. 2 Should we require use of U.S. GAAP for specialized industry issues in the primary financial statements or permit use of home country standards with reconciliation to U.S. GAAP? Which approach would produce the most meaningful primary financial statements? Is the approach of having the host country specify treatment for topics not addressed by the core standards a workable approach? Is there a better approach?

Q. 3 Are there any additional topics that need to be addressed in order to

[21] *See* the discussion, ''Development of the Core Standards Project,'' in Appendix C.

[22] This statement is available in the appendix to the SEC's *Report to Congress on Promoting The Global Preeminence of American Securities Markets* (October 1997).

[23] *See* Appendix C for a discussion of the development of the core standards work program.

provide a comprehensive set of standards?

2. Are the IASC Standards of Sufficiently High Quality? Why or Why Not?

When we refer to the need for high quality accounting standards, we mean that the standards must result in relevant, reliable information that is useful for investors, lenders, creditors and others who make capital allocation decisions. To that end, the standards must (i) result in a consistent application that will allow investors to make a meaningful comparison of performance across time periods and among companies; (ii) provide for transparency, so that the nature and the accounting treatment of the underlying transactions are apparent to the user; and (iii) provide full disclosure, which includes information that supplements the basic financial statements, puts the presented information in context and facilitates an understanding of the accounting practices applied. Such standards should:

- Be consistent with an underlying accounting conceptual framework;
- Result in comparable accounting by registrants for similar transactions, by avoiding or minimizing alternative accounting treatments;
- Require consistent accounting policies from one period to the next; and
- Be clear and unambiguous.

In assessing the quality of the IASC standards, we are applying these criteria on a standard-by-standard basis, as well as to the IASC standards as a whole. In comment letters submitted to the IASC, the SEC staff has raised concerns including, but not limited to:

- The ability to override an IAS where application of the IAS would not result in a ''true and fair view'' (see IAS 1);
- The option to revalue property, plant and equipment to fair value (see IAS 16);
- Transition provisions that permit unrecognized minimum pension and employee benefit obligations (see IAS 19);
- The amortization of negative goodwill to offset restructuring costs (see IAS 22);
- Unlimited useful lives for goodwill and other intangibles (see IAS 22 and IAS 38);
- The capitalization of costs related to the development of internally generated intangible assets (see IAS 38);
- The remeasurement of impaired assets at an amount other than fair value (see IAS 36); and
- Principles for derecognition of financial assets, and a modified form of basis adjustment for cash flow hedges, including hedges of anticipated transactions and firm commitments (see IAS 39).

You may wish to review the SEC staff and IOSCO comment letters for a further discussion of these and other issues.[24] We, of course, welcome comments on other issues posed by specific approaches taken in the IASC standards, regardless of whether they were raised in IOSCO or SEC staff comment letters.

Indeed, we are seeking advice on any technical issues arising with respect to the IASC standards. In general, we are seeking to determine whether preparers, auditors and users of financial statements have identified particular issues based on their experience with the IASC standards and whether they have developed strategies for addressing those issues. We also would benefit from the public's views regarding whether any of the standards represent a significant improvement over U.S. accounting practices.[25]

A critical issue in assessing the quality of the IASC standards will be whether they would produce the same level of transparency and comparability that generally is provided to U.S. investors under U.S. GAAP. The focus of the staff's comments to the IASC has not been on the differences between the proposed standards and U.S. GAAP; rather, the staff focused on the quality of the proposed standards. An analysis of the differences, however, could serve as a useful tool for highlighting what differing information might be provided in financial statements prepared using IASC standards compared with U.S. GAAP financial statements.[26] If the differences between the IASC standards and U.S. GAAP are significant, the financial position and operating results reported under the IASC standards may be difficult to compare with results reported under U.S. GAAP. The ability to make such a comparison is important for an investor making capital allocation decisions between U.S. and non-U.S. enterprises, especially within the same industry.

Q. 4 Are the IASC standards of sufficiently high quality to be used without reconciliation to U.S. GAAP in cross-border filings in the United States? Why or why not? Please provide us with your experience in using, auditing or analyzing the application of such standards. In addressing this issue, please analyze the quality of the standard(s) in terms of the criteria we established in the 1996 press release. If you considered additional criteria, please identify them.[27]

Q. 5 What are the important differences between U.S. GAAP and the IASC standards? We are particularly interested in investors' and analysts' experience with the IASC standards. Will any of these differences affect the usefulness of a foreign issuer's financial information reporting package? If so, which ones?

Q. 6 Would acceptance of some or all of the IASC standards without a requirement to reconcile to U.S. GAAP put U.S. companies required to apply U.S. GAAP at a competitive disadvantage to foreign companies with respect to recognition, measurement or disclosure requirements?

Q. 7 Based on your experience, are there specific aspects of any IASC standards that you believe result in better or poorer financial reporting (recognition, measurement or disclosure) than financial reporting prepared using U.S. GAAP? If so, what are the specific aspects and reason(s) for your conclusion?

3. Can the IASC Standards Be Rigorously Interpreted and Applied?

(a) *The experience to date.* High quality financial reporting cannot be guaranteed solely by developing accounting standards with the strongest theoretical bases; financial reporting may be weak if conceptually sound standards are not rigorously interpreted and applied. If accounting standards are

[24] Comment letters from the SEC staff and IOSCO's Working Party No. 1 are available in our public reference room. The staff of the Financial Accounting Standards Board (FASB), which also responded to many of the IASC's invitations to comment, has made its comment letters available on its website at <www.fasb.org>. Other U.S. organizations with an interest in standard setting, such as AICPA, the Financial Executives Institute's Committee on Corporate Reporting and the Institute of Management Accountants (IMA), also have commented on many of the core standards.

[25] The Chief Accountant of the Commission published a call for academic research on key international accounting and auditing issues in a letter to the American Accounting Association dated August 15, 1999. This letter is available on the SEC website at <www.sec.gov/news/extra/aaacall.htm>.

[26] In this respect, FASB has produced and periodically updated an analysis of the differences between FASB standards and those of the IASC. This comparison, which has been updated for all the components of the core standards project, is available from the FASB. See the FASB website at <www.fasb.org> for more information. The FASB's summary of this comparison is included as Appendix D to this document because the FASB's comparison study is not available on its website.

[27] For an additional discussion of the characteristics of high quality standards, see the FASB paper, *Quality of Accounting Standards*, in the appendices to the ''International Accounting Standard Setting: A Vision for the Future—Report of the FASB'' at <www.fasb.org>.

to satisfy the objective of having similar transactions and events accounted for in similar ways, preparers must recognize their responsibility to apply these standards in a way that is faithful to both the requirements and intent of the standards, and auditors and regulators around the world must insist on rigorous interpretation and application of those standards. Otherwise, the comparability and transparency that are the objectives of common standards will be eroded.

In this respect, it is difficult to evaluate the effectiveness of certain of the IASC standards at this stage. First, there is little direct use of IASC standards in developed capital markets. Second, even where IASC standards are used directly in those markets, a number of the new or revised standards may not have been implemented yet.[28] For that reason, financial statements currently prepared using IASC standards may not reflect the improvements achieved by the IASC in the core standards project. Therefore, preparers, users and regulators may not have significant implementation experience with respect to those standards to assist us in our evaluation of the quality of the standards as they are applied.

In order for any body of standards to be able to be rigorously interpreted and applied, there must be a sufficient level of implementation guidance. The IASC standards frequently provide less implementation guidance than U.S. GAAP. Instead, they concentrate on statements of principles, an approach that is similar to some national standards outside the United States. Also, the IASC has formatted its standards by using bold (''black'') lettering to emphasize basic requirements of the standards while placing explanatory text in normal (''gray'') lettering. We believe that the requirements of an IASC standard are not limited to the black lettered sections and that compliance with both black and gray letter sections of IASC standards should be regarded as necessary. Additionally, the IASC has published a basis for conclusions for only two of its standards. The basis for conclusion in U.S. standards often is useful in promoting consistent understanding of the standard setter's reasoning and conclusions.

Comparability may be achieved with respect to less detailed standards through common interpretation and practice by companies and auditors who are familiar with the standards. Earlier standard-setting organizations in the United States, such as the Accounting Principles Board, followed this approach and developed less detailed standards. Our experience with that approach was not favorable, however, and led to the current organization and approach to standard-setting under the FASB.[29]

Q. 8 Is the level of guidance provided in IASC standards sufficient to result in a rigorous and consistent application? Do the IASC standards provide sufficient guidance to ensure consistent, comparable and transparent reporting of similar transactions by different enterprises? Why or why not?

Q. 9 Are there mechanisms or structures in place that will promote consistent interpretations of the IASC standards where those standards do not provide explicit implementation guidance? Please provide *specific* examples.

Q. 10 In your experience with current IASC standards, what application and interpretation practice issues have you identified? Are these issues that have been addressed by new or revised standards issued in the core standards project?

Q. 11 Is there significant variation in the way enterprises apply the current IASC standards? If so, in what areas does this occur?

(b) *The need for a financial reporting infrastructure.* Effective financial reporting begins with management, which is responsible for implementing and applying properly a comprehensive body of accounting principles. Rigorous and consistent application of accounting standards also depends on implementation efforts of the standard-setter, auditors and regulators. There are concerns that current IASC standards may not be rigorously and consistently applied. For example, a recent study authored by the former IASC secretary-general identifies non-compliance with IASC standards by a number of the 125 companies surveyed. It also cites examples of auditors who failed to identify properly a lack of compliance with IASC requirements in their reports on an issuer's financial statements.[30]

In addition, the SEC staff has noted inconsistent applications of IAS 22, *Business Combinations.* The staff has received a number of requests to accept characterizations of business combinations as ''unitings of interests'' despite IAS 22's clear intention that uniting of interest accounting be used only in rare and limited circumstances. In addition, the SEC staff, based on its review of filings involving foreign private issuers using IASC standards, has identified a number of situations involving not only inconsistent application of the standards but also misapplication of the standards.[31] In these circumstances, the SEC staff has required adjustments to the financial statements in order to comply with IASC standards.

Q. 12 After considering the issues discussed in (i) through (iv) below, what do you believe are the essential elements of an effective financial reporting infrastructure? Do you believe that an effective infrastructure exists to ensure consistent application of the IASC standards? If so, why? If not, what key elements of that infrastructure are missing? Who should be responsible for development of those elements? What is your estimate of how long it may take to develop each element?

(i) *The interpretive role of the standard-setter.* In order for a set of accounting standards to be fully operational, the standard-setter must support reasonably consistent application of its standards. A standard-setter's responsibility for ensuring consistent application of its standards includes providing an effective mechanism for identifying and addressing interpretive questions in an expeditious fashion.

The IASC began addressing interpretive issues in 1997 with the creation of its Standing Interpretations Committee (SIC) to provide resolution of interpretive issues arising in the application of the IASC standards that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance.

Q. 13 What has your experience been with the effectiveness of the SIC in

[28] Fifteen of the 31 core standards are new or have been revised significantly as part of the core standards project, and most of these standards have required adoption dates in 1999, 2000 or 2001.

[29] *See* the report of the Wheat Commission, ''Establishing Financial Accounting Standards, a Report of the Study on Establishment of Accounting Principles,'' American Institute of Certified Public Accountants, p. 38 (March 1972).

[30] See ''The FT International Accounting Standards Survey 1999, an assessment of the use of IAS's by companies, national standard setting bodies, regulators and stock exchanges,'' by David Cairns, published by The Financial Times, London, 1999.

[31] *See* ''International Reporting Issues,'' Remarks by Donald J. Gannon at the 27th Annual National AICPA Conference on Current SEC Developments, December 8, 1999, and ''Financial Reporting Issues Critical to European SEC Registrants/Users of US GAAP,'' Remarks by Lynn E. Turner at the European FASB–SEC Financial Reporting Conference, Frankfurt, Germany, April 8, 1999 (available on the SEC website at <www.sec.gov>).

See also David Cairns, ''Exceptions to the Rule,'' *Accountancy International*, p. 84 (November 1999) and ''Compliance Must Be Enforced,'' *Accountancy International*, p. 64 (September 1998).

reducing inconsistent interpretations and applications of IASC standards? Has the SIC been effective at identifying areas where interpretive guidance is necessary? Has the SIC provided useful interpretations in a timely fashion? Are there any additional steps the IASC should take in this respect? If so, what are they?

(ii) *The restructuring of the IASC.* The IASC has published a restructuring plan which is expected to result in an independent Board whose members are selected based on technical expertise, with oversight provided by an independent set of Trustees. The restructuring also is expected to integrate the roles of the IASC and those of national standard-setters.[32]

At this time, we do not anticipate adopting a process-oriented approach (like our approach to the FASB[33]) to IASC standards. Instead, we expect to continue a product-oriented approach, assessing each IASC standard after its completion. Nonetheless, the quality of the standard-setter has relevance to our consideration of the IASC standards, particularly with respect to implementation and interpretation questions. Since many of the IASC standards are new or relatively new, application issues may arise that require the response of an effective and high quality standard setter. Additionally, the quality of the standard-setter has critical implications for the development and acceptance of future standards.[34]

An effective high quality standard-setter is characterized by:

- An independent decision-making body;
- An active advisory function;
- A sound due process;
- An effective interpretive function;
- Independent oversight representing the public interest; and
- Adequate funding and staffing.

Q. 14 Do you believe that we should condition acceptance of the IASC standards on the ability of the IASC to restructure itself successfully based on the above characteristics? Why or why not?

(iii) *The role of the auditor in the application of the standards.* High quality accounting standards and an effective interpretive process are not the only requirements for effective financial reporting. Without competent, independent audit firms and high quality auditing procedures to support the application of accounting standards, there is no assurance that the accounting standards will be applied appropriately and consistently. As discussed in the introduction to this release, increasing globalization of business and integration of capital markets raise challenging questions of how to provide oversight of audit professionals on a world-wide basis to ensure consistent high quality and ethical audit and accounting practices.

In the United States, implementation and application of U.S. GAAP are supported through professional quality control practices and professional and governmental (state and federal) oversight and enforcement activities. National technical offices of U.S. accounting firms serve an important role in ensuring an appropriate and consistent interpretation and application of U.S. GAAP and U.S. auditing standards.

Q. 15 What are the specific practice guidelines and quality control standards accounting firms use to ensure full compliance with non-U.S. accounting standards? Will those practice guidelines and quality control standards ensure application of the IASC standards in a consistent fashion worldwide? Do they include (a) internal working paper inspection programs and (b) external peer reviews for audit work? If not, are there other ways we can ensure the rigorous implementation of IASC standards for cross-border filings in the United States? If so, what are they?

Q. 16 Should acceptance of financial statements prepared using the IASC standards be conditioned on certification by the auditors that they are subject to quality control requirements comparable to those imposed on U.S. auditors by the AICPA SEC Practice Section, such as peer review and mandatory rotation of audit partners?[35] Why or why not? If not, should there be disclosure that the audit firm is not subject to such standards?

In many jurisdictions, including the United States, accountants and auditors are trained and tested in their domestic accounting standards, but do not receive training in IASC standards. For that reason, accountants and auditors around the world will need to develop expertise with IASC standards to support rigorous interpretation and application of these standards.

Q. 17 Is there, at this time, enough expertise globally with IASC standards to support rigorous interpretation and application of those standards? What training have audit firms conducted with respect to the IASC standards on a worldwide basis? What training with respect to the IASC standards is required of, or available to, preparers of financial statements or auditors certifying financial statements using those standards?

(iv) *The role of the regulator in the interpretation and enforcement of accounting standards.* While the Commission has the authority to establish accounting standards,[36] historically we have looked to the private sector for leadership in establishing and improving accounting standards to be used by public companies.[37] As a result, the Commission has recognized the FASB as the private sector body whose standards it considers to have substantial authoritative support. This partnership with the private sector facilitates input into the accounting standard-setting process from all stakeholders in U.S. capital markets, including financial statement preparers, auditors and users, as well as regulators. Our willingness to look to the private sector, however, has been with the understanding that we will, as necessary, supplement, override or otherwise amend private sector accounting standards.

The SEC staff is involved with the application of accounting standards on a daily basis through its review and comment process. This review process, administered by the Division of Corporation Finance, allows the staff to review and comment on a company's application of GAAP and related SEC disclosure requirements. The SEC staff would have the same significant

[32] *See* the report of the IASC's Strategy Working Party, ''Recommendations on Reshaping IASC for the Future,'' November 1999, available on the IASC website at <www.iasc.org.uk>.

[33] We have stated that ''* * * principles, standards and practices promulgated by the FASB * * * will be considered by the Commission as having substantial authoritative support. * * *'' *See* SEC Accounting Series Releases No. 4 and 150, codified in section 100 of the SEC's Financial Reporting Policies (FRR 101).

[34] *See* the comments of the SEC Chief Accountant regarding the IASC's restructuring plans, ''Statement of SEC Chief Accountant Lynn E. Turner on IASC Board Decision to Support Restructuring Plan,'' SEC Press release no. 99–152, dated November 17, 1999, available on the SEC website at <www.sec.gov>. You also may wish to read SEC staff comment letters dated May 14, 1999 and September 21, 1999 on Strategy Working Party proposals. All of the comments received by the IASC on its Strategy Working Party proposals are available on the IASC website at <www.iasc.org.uk>.

[35] *See* SECPS Section 1000.08 ''Organizational Structure and Function of the SEC Practice Section,'' ''Requirements of Members,'' American Institute of Certified Public Accountants.

[36] *See, e.g.,* Sections 7 and 19(a) and Schedule A of the Securities Act; Sections 3(b), 12(b) and 13(b) of the Exchange Act; and Sections 8, 30(e), 31 and 38(a) of the Investment Company Act of 1940.

[37] *See* Accounting Series Release (ASR) 4 (April 25, 1938) and ASR 150 (December 20, 1973).

interpretive and enforcement role in the application of the IASC standards when those standards are used to prepare financial statements included in SEC filings.[38] To perform that role, our staff would need to develop expertise regarding the IASC standards.[39]

However, other jurisdictions accepting IASC standards may develop conflicting interpretations or may accept applications of IASC standards that would not be acceptable in the United States and other jurisdictions, in part, because of lack of expertise, resources, or even the authority to question a company's application of accounting standards. We are seeking to identify ways to reduce the development of diverging interpretations of IASC standards.

Q. 18 Is there significant variation in the interpretation and application of IASC standards permitted or required by different regulators? How can the risk of any conflicting practices and interpretations in the application of the IASC standards and the resulting need for preparers and users to adjust for those differences be mitigated without affecting the rigorous implementation of the standards?

In considering changes in our current financial reporting requirements, we will consider the effects of possible changes on the ability of our enforcement program to provide an effective deterrent against financial reporting violations by foreign issuers, their corporate officials and their auditors.

Q. 19 Would further recognition of the IASC standards impair or enhance our ability to take effective enforcement action against financial reporting violations and fraud involving foreign companies and their auditors? If so, how?

To facilitate its investigations of possible securities law violations, the SEC staff may need to obtain access to a non-U.S. auditor's working papers, as well as testimony, in connection with audit work done outside the United States.[40] In some prior investigations, we have obtained access to information through the voluntary cooperation of the company or its foreign auditors. We also have the potential of using domestic compulsory mechanisms or enforcement tools such as memoranda of understanding and other arrangements with non-U.S. regulators. However, these approaches for obtaining information about an auditor's work can cause delays in investigations, and may still not permit obtaining access to working papers and testimony that are needed to assess information the issuer has provided to its auditors and to investigate the adequacy of the work supporting the auditor's report. The circumstances in which we need this information have grown, due to the expanded multinational activities of U.S. companies and the increasing number of foreign issuers that are listed on U.S. exchanges. Greater acceptance of the IASC standards may increase further the instances in which an issuer's auditor is not based in the United States.

Q. 20 We request comment with respect to ways to assure access to foreign working papers and testimony of auditors who are located outside the United States. For example, should we amend Regulation S–X to require a representation by the auditor that, to the extent it relied on auditors, working papers, or information from outside the United States, the auditor will make the working papers and testimony available through an agent appointed for service of process? If not, should we require that the lack of access to auditors' workpapers be disclosed to investors? Is there another mechanism for enhancing our access to audit working papers and witnesses outside the United States?

B. Possible Approaches to Recognition of the IASC Standards for Cross-Border Offerings and Listings

As discussed, IOSCO and Commission recognition of the IASC standards will depend on the outcome of the current assessment work. The assessment work has two aspects: (1) Considering the quality of each of the IASC standards individually; and (2) evaluating whether the body of standards operates effectively as a whole.

The goal of the core standards project has been to develop a high quality set of generally accepted international accounting standards that ultimately would reduce or eliminate the need for reconciliation to national standards. Any Commission action could take several forms, including, for example:

- Maintaining the current reconciliation requirements in all respects.
- Removing some of the current reconciliation requirements for selected IASC standards and extending that recognition to additional IASC standards as warranted based on future review of each standard. Under this approach, when alternative treatments are specified (such as benchmarks and allowed alternatives), we may specify one treatment as acceptable, while retaining the reconciliation requirement to those financial statements that employ the unacceptable treatment. For example, we might require reconciliation if a company applies the allowed alternative treatment of periodically writing-up long-lived assets to estimated fair value.[41] Other items for which reconciliation might be required include unrecorded pension liabilities and costs capitalized for internally generated intangible assets.
- Relying on the IASC standards for recognition and measurement principles, but requiring U.S. GAAP and SEC supplemental disclosure requirements for footnote disclosures and the level of detail for the line items in financial statements.
- Accepting financial statements prepared in accordance with the IASC standards without any requirement to reconcile to U.S. GAAP.

There may be other approaches, or combinations of approaches, that would be appropriate. In determining what approach to take we will consider outstanding substantive issues noted by IOSCO in its report, the underlying work assessing the IASC standards performed by the SEC staff and other members of IOSCO, as well as responses we receive to this release. In addition, the approach we adopt initially may change in light of future modifications of the IASC standards or further development of the related infrastructure elements.

Q. 21 What has been your experience with the quality and usefulness of the information included in U.S. GAAP reconciliations? Please explain, from your viewpoint as a preparer, user, or auditor of non-U.S. GAAP financial statements, whether the reconciliation process has enhanced the usefulness or reliability of the financial information and how you have used the information provided by the reconciliation. Please identify any consequences, including quantification of any decrease or increase in costs or benefits, that could result from reducing or eliminating the reconciliation requirement.

[38] We are not considering introducing mutual recognition of other jurisdictions' oversight of financial statements prepared in accordance with IASC standards.

[39] We already have begun a staff training program in anticipation of an increasing number of foreign registrants using the IASC standards in preparing their primary financial statements.

[40] For example, for non-U.S. work that supports a U.S. audit report or with respect to audit reports issued by non-U.S. audit firms for U.S. filings.

[41] IAS 16 (revised 1993) ¶¶ 36–51.

Q. 22 Should any requirements for reconciliation differ based on the type of transaction (*e.g.*, listing, debt or equity financing, rights offering, or acquisition) or the type of security (*e.g.*, ordinary shares, convertible securities, investment grade or high yield debt)? Are there any other appropriate bases for distinction?

Q. 23 If the current reconciliation requirements are reduced further, do you believe that reconciliation of a ''bottom line'' figure would still be relevant (e.g., presenting net income and total equity in accordance with U.S. GAAP)?

Q. 24 Should any continuing need for reconciliation be assessed periodically, based on an assessment of the quality of the IASC standards?

Q.25 The IASC standards finalized as part of the core standards project include prospective adoption dates. Most standards are not required to be applied until fiscal years beginning on or after January 1, 1998, at the earliest. Should we retain existing reconciliation requirements with respect to the reporting of any fiscal year results that were not prepared in accordance with the revised standards or simply require retroactive application of all revised standards regardless of their effective dates? If not, why not?

The current reconciliation requirements are designed to make financial statements prepared under non-U.S. GAAP more comparable to those prepared under U.S. GAAP. Additionally, there may be indirect benefits realized from those requirements. For example, some multinational accounting firms have stated that the reconciliation process has served as a quality control mechanism with respect to audit work performed by their local offices with respect to foreign companies. On the other hand, the SEC staff, based on its review of filings involving foreign private issuers using non-U.S. GAAP, has noted a number of situations involving the inclusion of reconciling items that appear to be the result of non-compliance with home country GAAP rather than a difference between the home country (or IASC) basis of accounting and U.S. GAAP. As such, there should not be a reconciling item. This may be indicative of not enough focus on the accuracy of the primary financial statements.

Q. 26 Does the existence of a reconciliation requirement change the way in which auditors approach financial statements of foreign private issuers? Also, will other procedures develop to ensure that auditors fully versed in U.S. auditing requirements, as well as the IASC standards, are provided an opportunity to review the financial reporting practices for consistency with those standards? If so, please describe these procedures. Alternatively, will the quality of the audit and the consistency of the application of the IASC standards depend on the skill and expertise of the local office of the affiliate of the accounting firm that conducts the audit?

V. Conclusion

Following receipt and review of comments, we will determine whether rulemaking or other further action is appropriate. In addition to responding to the specific questions we have presented in this release, we encourage commenters to provide any information to supplement the information and assumptions contained in this release regarding the role of accounting standards in the capital-raising process, the information needs of investors and capital markets, and the other matters discussed. We also invite commenters to provide views and data as to the costs and benefits associated with the possible changes discussed in this release in comparison to the costs and benefits of the existing regulatory framework. In order for us to assess the impact of changes that could affect capital formation, market efficiency and the protection of investors, we solicit comment from the point of view of a variety of groups, including, without limitation, foreign and domestic issuers, underwriters, broker-dealers, analysts, investors, accountants and attorneys involved in the registration process and other interested parties.

Dated: February 16, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

Appendix A.—Listing of Questions in the Concept Release

Criteria for Assessment of the IASC Standards

Are the Core Standards Sufficiently Comprehensive?

Q. 1 Do the core standards provide a sufficiently comprehensive accounting framework to provide a basis to address the fundamental accounting issues that are encountered in a broad range of industries and a variety of transactions without the need to look to other accounting regimes? Why or why not?

Q. 2 Should we require use of U.S. GAAP for specialized industry issues in the primary financial statements or permit use of home country standards with reconciliation to U.S. GAAP? Which approach would produce the most meaningful primary financial statements? Is the approach of having the host country specify treatment for topics not addressed by the core standards a workable approach? Is there a better approach?

Q. 3 Are there any additional topics that need to be addressed in order to provide a comprehensive set of standards?

Are the IASC Standards of Sufficiently High Quality? Why or Why Not?

Q. 4 Are the IASC standards of sufficiently high quality to be used without reconciliation to U.S. GAAP in cross-border filings in the United States? Why or why not? Please provide us with your experience in using, auditing or analyzing the application of such standards. In addressing this issue, please analyze the quality of the standard(s) in terms of the criteria we established in the 1996 press release. If you considered additional criteria, please identify them.

Q. 5 What are the important differences between U.S. GAAP and the IASC standards? We are particularly interested in investors' and analysts' experience with the IASC standards. Will any of these differences affect the usefulness of a foreign issuer's financial information reporting package? If so, which ones?

Q. 6 Would acceptance of some or all of the IASC standards without a requirement to reconcile to U.S. GAAP put U.S. companies required to apply U.S. GAAP at a competitive disadvantage to foreign companies with respect to recognition, measurement or disclosure requirements?

Q. 7 Based on your experience, are there specific aspects of any IASC standards that you believe result in better or poorer financial reporting (recognition, measurement or disclosure) than financial reporting prepared using U.S. GAAP? If so, what are the specific aspects and reason(s) for your conclusion?

Can the IASC Standards Be Rigorously Interpreted and Applied?

The Experience to Date

Q. 8 Is the level of guidance provided in IASC standards sufficient to result in a rigorous and consistent application? Do the IASC standards provide sufficient guidance to ensure consistent, comparable and transparent reporting of similar transactions by different enterprises? Why or why not?

Q. 9 Are there mechanisms or structures in place that will promote consistent interpretations of the IASC standards where those standards do not provide explicit implementation guidance? Please provide *specific* examples.

Q. 10 In your experience with current IASC standards, what application and interpretation practice issues have you identified? Are these issues that have been addressed by new or revised standards issued in the core standards project?

Q. 11 Is there significant variation in the way enterprises apply the current IASC standards? If so, in what areas does this occur?

The Need for a Financial Reporting Infrastructure

Q. 12 After considering the issues discussed in (i) through (iv) below, what do

you believe are the essential elements of an effective financial reporting infrastructure? Do you believe that an effective infrastructure exists to ensure consistent application of the IASC standards? If so, why? If not, what key elements of that infrastructure are missing? Who should be responsible for development of those elements? What is your estimate of how long it may take to develop each element?

The Interpretive Role of the Standard-Setter

Q. 13 What has your experience been with the effectiveness of the SIC in reducing inconsistent interpretations and applications of IASC standards? Has the SIC been effective at identifying areas where interpretive guidance is necessary? Has the SIC provided useful interpretations in a timely fashion? Are there any additional steps the IASC should take in this respect? If so, what are they?

Q. 14 Do you believe that we should condition acceptance of the IASC standards on the ability of the IASC to restructure itself successfully based on the above characteristics? Why or why not?

The Role of the Auditor in the Application of the Standards

Q. 15 What are the specific practice guidelines and quality control standards accounting firms use to ensure full compliance with non-U.S. accounting standards? Will those practice guidelines and quality control standards ensure application of the IASC standards in a consistent fashion worldwide? Do they include (a) internal working paper inspection programs and (b) external peer reviews for audit work? If not, are there other ways we can ensure the rigorous implementation of IASC standards for cross-border filings in the United States? If so, what are they?

Q. 16 Should acceptance of financial statements prepared using the IASC standards be conditioned on certification by the auditors that they are subject to quality control requirements comparable to those imposed on U.S. auditors by the AICPA SEC Practice Section, such as peer review and mandatory rotation of audit partners? Why or why not? Why or why not? If not, should there be disclosure that the audit firm is not subject to such standards?

Q. 17 Is there, at this time, enough expertise globally with IASC standards to support rigorous interpretation and application of those standards? What training have audit firms conducted with respect to the IASC standards on a worldwide basis? What training with respect to the IASC standards is required of, or available to, preparers of financial statements or auditors certifying financial statements using those standards?

The Role of the Regulator in the Interpretation and Enforcement of Accounting Standards

Q. 18 Is there significant variation in the interpretation and application of IASC standards permitted or required by different regulators? How can the risk of any conflicting practices and interpretations in the application of the IASC standards and the resulting need for preparers and users to adjust for those differences be mitigated without affecting the rigorous implementation of the standards?

Q. 19 Would further recognition of the IASC standards impair or enhance our ability to take effective enforcement action against financial reporting violations and fraud involving foreign companies and their auditors? If so, how?

Q. 20 We request comment with respect to ways to assure access to foreign working papers and testimony of auditors who are located outside the United States. For example, should we amend Regulation S–X to require a representation by the auditor that, to the extent it relied on auditors, working papers, or information from outside the United States, the auditor will make the working papers and testimony available through an agent appointed for service of process? If not, should we require that the lack of access to auditors' workpapers be disclosed to investors? Is there another mechanism for enhancing our access to audit working papers?

Possible Approaches to Recognition of the IASC Standards for Cross-Border Offerings and Listings

Q. 21 What has been your experience with the quality and usefulness of the information included in U.S. GAAP reconciliations? Please explain, from your viewpoint as a preparer, user, or auditor of non-U.S. GAAP financial statements, whether the reconciliation process has enhanced the usefulness or reliability of the financial information and how you have used the information provided by the reconciliation. Please identify any consequences, including quantification of any decrease or increase in costs or benefits, that could result from reducing or eliminating the reconciliation requirement.

Q. *22* Should any requirements for reconciliation differ based on the type of transaction (*e.g.*, listing, debt or equity financing, rights offering, or acquisition) or the type of security (*e.g.*, ordinary shares, convertible securities, investment grade or high yield debt)? Are there any other appropriate bases for distinction?

Q. *23* If the current reconciliation requirements are reduced further, do you believe that reconciliation of a ''bottom line'' figure would still be relevant (e.g., presenting net income and total equity in accordance with U.S. GAAP)?

Q. 24 Should any continuing need for reconciliation be assessed periodically, based on an assessment of the quality of the IASC standards?

Q. 25 The IASC standards finalized as part of the core standards project include prospective adoption dates. Most standards are not required to be applied until fiscal years beginning on or after January 1, 1998, at the earliest. Should we retain existing reconciliation requirements with respect to the reporting of any fiscal year results that were not prepared in accordance with the revised standards or simply require retroactive application of all revised standards regardless of their effective dates? If not, why not?

Q. 26 Does the existence of a reconciliation requirement change the way in which auditors approach financial statements of foreign private issuers? Also, will other procedures develop to ensure that auditors fully versed in U.S. auditing requirements, as well as the IASC standards, are provided an opportunity to review the financial reporting practices for consistency with those standards? If so, please describe these procedures. Alternatively, will the quality of the audit and the consistency of the application of the IASC standards depend on the skill and expertise of the local office of the affiliate of the accounting firm that conducts the audit?

Appendix B.—List of Core Standards and Each Standard's Effective Date

IAS and title	Effective date
1 Presentation of Financial Statements (revised).	1 Jan 99
2 Inventories	1 Jan 95
4 Depreciation Accounting	[1]1 Jan 77
7 Cash Flow Statements	1 Jan 94
8 Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies.	1 Jan 95
10 Events After the Balance Sheet Date (revised).	1 Jan 00
11 Construction Contracts	1 Jan 95
12 Income Taxes (revised)	1 Jan 98
14 Segment Reporting (revised).	1 Jul 98
16 Property, Plant and Equipment (revised).	1 Jul 99
17 Leases (revised)	1 Jan 99
18 Revenue	1 Jan 95
19 Employee Benefits (revised)	1 Jan 99
20 Accounting for Government Grants and Disclosure of Government Assistance.	1 Jan 84
21 The Effects of Changes in Foreign Exchange Rates.	1 Jan 95
22 Business Combinations (revised).	1 Jul 99
23 Borrowing Costs	1 Jan 95
24 Related Party Disclosures	1 Jan 86
25 Investment Properties[2]	1 Jan 87
27 Consolidated Financial Statements and Accounting for Investments in Subsidiaries.	1 Jan 90
28 Accounting for Investments in Associates.	1 Jan 90
29 Financial Reporting in Hyperinflationary Economies.	1 Jan 90
31 Financial Reporting of Interests in Joint Ventures.	1 Jan 92
32 Financial Instruments: Disclosure and Presentation.	1 Jan 96
33 Earnings Per Share	1 Jan 99
34 Interim Financial Reporting	1 Jan 99
35 Discontinuing Operations	1 Jan 99
36 Impairment of Assets	1 Jul 99
37 Provisions, Contingent Liabilities and Contingent Assets.	1 Jul 99
38 Intangible Assets	1 Jul 99
39 Financial Instruments: Recognition and Measurement.	1 Jan 01

[1] Will be withdrawn once IAS 38 becomes effective.

[2] Revisions to this standard are being debated currently. E64, *Investment Properties*, has been issued for comment. The IASC expects to finalize this standard in March 2000.

Appendix C.—The Core Standards Project

A. The IASC and IOSCO

The International Accounting Standards Committee (IASC) is a private sector body whose membership includes all the professional accountancy bodies that are members of the International Federation of Accountants (IFAC). IFAC has more than 140 members from over 100 countries. The IASC has the dual objectives of (i) formulating international accounting standards and promoting their acceptance and observance; and (ii) working generally for improvement and harmonization of accounting standards.

Currently,[42] the business of the IASC is conducted by a Board with 16 voting delegations [43] and five non-voting observer delegations with the privilege of the floor.[44] Each delegation includes up to three members who share a single vote. Delegation members normally are drawn from the accountancy profession and preparer community; representatives of national standard-setters may be included in a delegation, often as the technical advisor. The Board currently meets approximately four times a year for about a week to receive reports from its staff and steering committees and to discuss and approve exposure drafts and final standards for publication.

Board delegates serve on a part-time, volunteer basis. The IASC has a small full-time staff based in London. This staff provides a manager for most IASC projects; project staffing, in the form of Steering Committees, is provided by volunteers who represent a mix of Board member and non-Board member IFAC organizations. IOSCO (the International Organization of Securities Commissions) and the European Commission are non-voting observers for most Steering Committees.[45]

IOSCO is an association of securities regulatory organizations. It has approximately 135 ordinary, associate and affiliate members, including twelve based in the United States. Two key IOSCO committees following this project are the Technical Committee and its Working Party No. 1 on Multinational Disclosure and Accounting. The Technical Committee is composed of 16 regulatory agencies [46] that regulate some of the world's largest, more developed and internationalized markets. Its objective is to review major regulatory issues related to international securities and futures transactions and to coordinate practical responses to these concerns. Both the Commission and the Commodity Futures Trading Commission are members of this committee. We are represented by a member of the Commission.

Working Party No. 1 is one of several working groups that report to the Technical Committee. It has members from sixteen jurisdictions and is chaired by a Commission staff member. Commission staff members from the Division of Corporation Finance and the Office of the Chief Accountant are members of the Working Party.[47]

As a member of IOSCO, the Commission has been a significant participant in efforts to harmonize regulatory requirements for cross-border offerings and listings. Most recently, IOSCO approved and recommended that its members adopt a set of non-financial statement disclosure standards for the purposes of cross-border offerings and listings.[48] We have amended our foreign private issuer disclosure requirements to implement these IOSCO disclosure standards.[49]

B. Development of the Core Standards Project [50]

In 1989, IOSCO prepared a report entitled, ''International Equity Offers.'' [51] That report noted that cross-border offerings would be greatly facilitated by the development of internationally accepted accounting standards. Rather than attempt to develop those standards itself, IOSCO focused on the efforts of the IASC.

In 1993, IOSCO wrote to the IASC detailing the necessary components of a reasonably complete set of standards to create a comprehensive body of principles for enterprises undertaking cross-border securities offerings. In 1993, the IASC completed a project to improve the comparability and usefulness of financial statements prepared in accordance with its standards. Prior to this project, a number of IASC standards codified existing practice in multiple jurisdictions, permitting several alternative (and at times inconsistent) treatments for a single type of transaction. As a result of this improvement project, many alternatives were eliminated, although, in a few areas, the IASC standard retained multiple approaches, with one designated as a ''benchmark'' treatment and the other as an ''allowed alternative.''

In 1994, IOSCO completed a review of the revised IASC standards and identified a number of issues that would have to be addressed, as well as standards that the IASC would have to improve, before IOSCO could consider recommending IASC standards for use in cross-border listings and offerings. IOSCO divided the issues into three categories:

1. Issues that required a solution prior to consideration by IOSCO of an endorsement of the IASC standards;
2. Issues that would not require resolution before IOSCO could consider endorsement, although individual jurisdictions might specify treatments that they would require if those issues were not addressed satisfactorily; and
3. Areas where improvements could be made, but that the IASC did not need to address prior to consideration of the IASC standards by IOSCO.

In July 1995, IOSCO and the IASC agreed that the proposed ''core standards work program'' would, if completed successfully, address all the issues that required a resolution before IOSCO would consider endorsement.[52] IOSCO stated that, if the resulting IASC standards are acceptable to its Technical Committee, that group would recommend endorsement of those standards for cross-border capital raising and listing purposes.

C. Overview of the Work Program

The IASC's work program identified 12 areas that required new or substantially revised standards. As of January 2000, the IASC had published seven new standards and ten revised standards addressing those areas. One standard remains under consideration.[53] Since the IASC standards are copyrighted, we have not reproduced them as part of this release. However, summaries of the IASC standards, as well as information about obtaining the full text of these standards, are available from the IASC website at www.iasc.org.uk. Additionally,

[42] The IASC's Board has approved a plan for restructuring, subject to ratification by its membership. *See* the report of the IASC Strategy Working Party, ''Recommendations on Reshaping IASC for the Future,'' November 1999, available at the IASC website iasc.org.uk.

[43] The 16 voting delegations are: Australia, Canada, France, Germany, India (shares with Sri Lanka), Japan, Malaysia, Mexico, Netherlands, Nordic Federation of Public Accountants (the delegation to the IASC Board includes representatives from Denmark, Norway and Sweden; Finland and Iceland also are member countries), South Africa (shares with Zimbabwe), the United Kingdom, and the United States, the International Coordinating Committee of Financial Analysts' Association, the International Association of Financial Executives Institute, and the Federation of Swiss Holding Companies.

[44] The European Commission, the International Organization of Securities' Commission, the U.S. Financial Accounting Standards Board, the Chinese Institute of Certified Public Accountants, and the IFAC Public Sector Committee.

[45] For more information, see the IASC website at www.iasc.org.uk.

[46] The jurisdictions on the Technical Committee are: Australia, Belgium, the Canadian provinces of Ontario and Quebec, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States.

[47] For more information, see the IOSCO website at www.iosco.org.

[48] Final Communique of the 23rd Annual Conference of the International Organization of Securities Commissions (September 18, 1998).

[49] International Disclosure Standards, Exchange Act Release No. 41936 (September 28, 1999). [64 FR 53900].

[50] For a more detailed discussion of the background of the core standards project, see the *Report to Congress on Promoting Global Preeminence of American Securities Markets*, prepared by the SEC pursuant to Section 509 of the National Securities Improvements Act of 1996 (October 1997) (Report to Congress). The Report to Congress is available through the Commission's website at www.sec.gov.

[51] A summary of this report may be obtained from IOSCO. *See* the IOSCO website at www.iosco.org.

[52] The core standards work program exclude specialized industry standards, such as the banking, insurance, or motion picture industries. Specialized industry accounting issues are expected to be treated as suspense issues.

[53] The IASC still has under consideration one topic that is part of the core standards—investment properties. The IASC expects to complete this project in March 2000. The Working Party determined that although this element of the core standards project remains uncompleted, IOSCO's assessment process could begin, with a view to updating its analysis once the final standard on this topic is issued.

copies of the IASC standards have been placed in our public reference room in the public file for this release.

IOSCO, through Working Party No. 1, is a non-voting observer at meetings of the IASC Board, its Steering Committees, and its Standing Interpretations Committee. The Working Party has attempted to reply to each document the IASC published for comment. The Working Party comment letters alerted the IASC to concerns of the Working Party or its members while the issues were under discussion.

Some members of the Working Party also commented individually on proposed standards. In addition to contributing to Working Party comment letters, the Commission staff issued comment letters that provided detailed technical comments on substantially all of the IASC's published documents.[54] In developing comment letters, the staff focused on the type of information that would be provided to investors. The letters sought to identify areas where comparability and transparency might be compromised, and where other significant investor protection issues existed. The staff did not focus its analysis on eliminating differences from U.S. GAAP. In fact, in several instances the staff encouraged the IASC to benefit from U.S. experience with a particular component of U.S. GAAP and adopt a different and improved approach.

D. The Assessment Process

The pace of the IASC work program has required that, immediately following the adoption of a final standard, the Working Party and Commission staff shift their attention to other pending standards. As a result, the Working Party and Commission staff did not stop to evaluate each completed standard and assess the extent to which it addressed the concerns raised in the comment letters. This approach also was consistent with the understanding between the IASC and IOSCO that the Working Party would assess the completed standards, individually and as a group, once the IASC completed all of the core standards. That assessment of the core standards is now underway, and is focusing not only on the extent to which the completed standards address the IOSCO concerns, but also on whether the IASC's standards work together to form an operational basis of accounting.

Following its review and assessment of the core standards, the Working Party will make a report to IOSCO's Technical Committee that will describe outstanding substantive issues with the IASC standards and suggest ways to address these issues. The Technical Committee then is expected to develop and circulate to IOSCO's membership a resolution regarding the IASC standards.

Resolutions of both the Technical Committee and IOSCO as a whole are non-binding on its member organizations. Accordingly, were the Technical Committee to recommend to IOSCO's members that they accept financial statements prepared using IASC standards, each member would have to determine whether and how to implement that recommendation at a domestic level.

If, as a result of its assessment of the completed core standards, we conclude that changes to our current requirements for foreign private issuers are appropriate, we will issue a rule proposal for public comment. This may include modifications of the financial statement requirements for registration and reporting forms utilized by foreign private issuers, such as Forms F–1 and 20–F.

Appendix D.—Summary of the FASB's IASC/US GAAP Comparison Project

This document is an excerpt from the FASB's ''*The IASC-U.S. Comparison Project: A Report on the Similarities and Differences between IASC Standards and U.S. GAAP,*'' copyrighted by the Financial Accounting Standards Board, Norwalk, Connecticut, USA, 1999.

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CHAPTER 2—SUMMARY OF OBSERVATIONS

Introduction

In keeping with the objectives of the project, the comparative analyses presented in Chapters 3–30 of this report provide an information base to facilitate decision making about IASC standards by investors, analysts, standard setters, regulators, and others. Each comparative analysis was undertaken independently. However, based on the types of differences identified by the individual authors, there are some general observations that can be made about the potential comparability of information reported in financial statements between an enterprise using IASC standards and one using U.S. GAAP. Those observations are the subject of this chapter.

The discussion of observations that follows generally centers on the extent to which the similarities and differences identified by the authors of the comparative analyses could affect the comparability of actual reported financial information. That is, the discussion focuses on those similarities and differences deemed most likely to be significant to financial statement users comparing the financial statements of enterprises following IASC standards and those following U.S. GAAP. There are some limitations to that approach. Primarily, the basis for the project was limited to the comparison of accounting standards; it did not seek to observe the actual application and enforcement of those standards. How standards are interpreted and applied and the extent to which they are enforced can have a significant impact on reported financial information. Evaluating the effects of actual application and enforcement of accounting standards was beyond the scope of the project. It is not yet possible to observe those effects because many of the IASC standards and some U.S. standards that are the subject of the chapters that follow have yet to be used in preparing financial statements.

This chapter is presented in three sections. The first provides some background for understanding how differences in accounting standards can be important for assessing financial statement comparability. The second section provides some general observations about the most significant types of differences observed by the authors of the comparative analysis chapters and provides examples to illustrate those types of differences. The last section summarizes the key points of this chapter.

A Word About Differences

The IASC-U.S. comparison project set out to identify similarities and differences between IASC standards and U.S. GAAP (primarily FASB standards) predisposed to the view that the shortest route to understanding comparability would be to zero in on differences. Therefore, this report, by its very nature, focuses on differences as a basis for comparison. Similarities tend to be identified and described in a general manner, while differences are discussed in more detail.

IASC standards are different from FASB standards. That conclusion is not new, nor is it unique to this report. It is neither the objective nor the intent of the IASC to develop standards identical to FASB standards. IASC standards and FASB standards seek to serve different environments (international versus national), respond to different mandates, have different technical support levels, and result from different standard-setting structures and processes.[55] Differences between those two sets of standards, therefore, are inevitable and not necessarily inappropriate. However, if financial statements based on IASC standards are to be considered appropriate for cross-border access to the world's capital markets (including those in the United States), it is essential that IASC standards meet the demands of those capital markets for high-quality financial information.

In undertaking the project, the FASB staff sought to obtain greater understanding of the specific nature of IASC standards. At the time that the project began (in 1995), detailed information about the level of comparability of reported financial results between financial statements prepared based on IASC standards and those prepared based on U.S. GAAP was available to relatively few individuals. In large part due to increased awareness resulting from publicity surrounding the IASC's core standards project, research on the issues related to international comparability has increased. However, conclusions about the acceptability of IASC standards for cross-border securities listings and other purposes are mixed and often are supported by fragmentary evidence.

[54] Comment letters of the SEC staff and IOSCO Working Party No. 1 are available for inspection and copying in our public reference room.

[55] As noted in Chapter 1 of this report [*The IASC-U.S. Comparison Project: A Report on the Similarities and Differences between IASC Standards and U.S. GAAP*], the IASC published a discussion paper, *Shaping IASC for the Future,* in December, 1998. That discussion paper proposes changes to the IASC's objectives, standard-setting structure, and due process.

Some studies that compare IASC standards with U.S. GAAP have asserted that the two sets of standards are broadly similar or that use of IASC standards can lead to results similar to those that would have been obtained had U.S. GAAP been used. As some of the comparative analyses in this report show, some of the IASC standards and their U.S. GAAP counterparts do have a similar underlying approach to accounting in certain areas and it may be possible to arrive at similar results under both standards. However, the existence of alternatives, even within standards that are very similar, can create the potential for very different reported results. The comparative analysis of IAS 23, *Borrowing Costs*, provides an example. The allowed alternative treatment in IAS 23 requires capitalization of borrowing costs incurred in the acquisition, construction, or production of certain assets. That is very similar to the U.S. GAAP requirement. However, IAS 23's benchmark treatment requires that borrowing costs be expensed. That is very different from the allowed alternative treatment (and, consequently, from U.S. GAAP). The existence of both a benchmark and allowed alternative treatment has the potential to result in noncomparability both between IASC-based and U.S. GAAP-based financial statements and among financial statements prepared under IASC standards.

Other studies have concluded that IASC standards are too broad and general to ensure that similar accounting methods are applied in similar circumstances or that similar results are consistently achieved. While the guidance provided by IASC standards often is more general than that found in U.S. GAAP, IASC standards may be more rigorous than the national standards of some countries and, in some circumstances, may be equally or more effective than U.S. GAAP. For example, both IAS 2, *Inventories*, and U.S. GAAP provide broad, general guidance on cost-flow assumptions in estimating inventory cost. However, IAS 2 provides more-extensive guidance than does U.S. GAAP on the topic of accounting for inventories of service providers.

On the other hand, an absence of implementation guidance can lead to differences in applying standards that are broadly similar. For example, IAS 33, *Earnings per Share*, and its U.S. GAAP counterpart, FASB Statement No. 128, *Earnings per Share*, resulted from a cooperative standard-setting effort between the IASC and the FASB. The two standards are very similar. However, Statement 128 provides more-specific implementation guidance for some of the calculations required for determining earnings per share, for example, for determining the impact of different types of contingencies related to contingently issuable shares. There may be differences in earnings-per-share calculations between enterprises following IAS 33 and those following Statement 128 because, in the absence of implementation guidance, enterprises following IAS 33 are not required to determine the impact of contingently issued shares on the same basis as that described in Statement 128 and would not be prohibited from using alternative bases for making that determination.

Finally, not all questions about comparability relate to the comparability of financial statements prepared using different sets of accounting standards. Few studies have focused on comparability among the financial statements of enterprises following IASC standards. For example, there is little (if any) research that provides evidence of whether the IASC-based financial statements provided by an enterprise from France are comparable to the financial statements provided by a similar enterprise from Japan that also is following IASC standards. That type of comparison was beyond the scope of this report. Notwithstanding similarities with or differences from U.S. GAAP, because IASC standards will be applied in different national environments—each with its own set of national accounting standards or conceptual framework—IASC standards must be capable of being consistently interpreted and applied in order to meet the objective of international comparability among those enterprises that use IASC standards.

Thus, it would be misleading to make sweeping generalizations or blanket assertions about the relative quality of IASC standards based solely on the similarities and differences between two sets of accounting standards. The mere existence of differences between accounting standards is not a sufficient measure of the quality or merit of any particular accounting standard relative to the other. The true test of an accounting standard is whether it satisfies the demand for information in the environment in which it is intended to be used. What is required, therefore, is a fuller understanding of the nature of similarities and differences in the information provided in the financial statements as a result of applying the two sets of accounting principles. The FASB staff believes that the comparative analyses in this report will provide useful information to help interested parties evaluate the current state of IASC–U.S. GAAP comparability and draw their own conclusions.

Types of Differences

The comparative analyses in the following chapters identify a wide range of differences between IASC standards and U.S. GAAP and attempt to assess the impact of those differences on the comparability of the respective financial statements prepared using each set of standards. Not all differences between standards will be meaningful to financial statement users trying to compare investment opportunities. Some believe that differences in methodologies for deriving financial information and where in the financial statements it is presented (which are important considerations for standard setters in developing accounting requirements) are less important than whether the resulting financial information provided is essentially the same. For example, two standard setters may have different underlying conceptual bases for concluding on a particular recognition or measurement requirement, but the financial information that results from applying either standard could be the same. Financial statement users may not find the difference in concepts troublesome in that case.

From the perspective of financial statement users, other types of differences may be seen as more problematic because they are likely to result in differences between the information reported for a given reporting period in financial statements of enterprises following IASC standards and the information reported by those following U.S. GAAP that would be difficult to compensate for in making comparisons. For example, the types of differences of greatest significance in comparing financial statements are likely to fall within the following categories: [56]

1. *Recognition differences.* Differences in recognition criteria and guidance for initial or subsequent recognition of the same financial statement item can lead to differences in:

- Whether that particular item is recognized at all.
- How recognition of that item affects the financial statements (for example, capitalization of an item on the balance sheet versus expensing that item as incurred in the income statement).
- When (that is, in what reporting period) the item is initially recognized.

2. *Measurement differences.* Different approaches to initial or subsequent measurement can lead to differences in the amounts recognized for the same item in financial statements. For example, one standard might require that an item be subsequently measured at amortized cost, while its counterpart might require the same type of item to be revalued to current cost or fair value in each reporting period.

3. *Alternatives.* Differences can arise when one standard permits a choice between two or more alternative methods of accounting for a similar transaction, but its counterpart requires use of a single method. For example, one standard might permit an item to be either capitalized or expensed as incurred, but its counterpart might require the same item to be expensed as incurred. When alternatives are permitted, that can also lead to differences between the financial statements of two enterprises following the same set of standards.

4. *Lack of requirements or guidance.* Differences also can arise when one standard does not provide requirements or guidance for a particular topic or class of transactions within an accounting area covered by its counterpart. For example, one standard might provide specific guidance for recognition and measurement of government grants, while its counterpart might lack guidance covering that area.

5. *Other differences.* There are some other specific differences between IASC standards and U.S. GAAP that affect the basis for presentation of information contained in the financial statements. Examples of areas in which those differences occur are the

[56] There also are less-significant differences between IASC standards and U.S. GAAP that contribute to noncomparability, for example, differences in definitions of line items and in presentation requirements. While those differences are identified in the chapters that follow, the discussion in this chapter is limited to examples in the categories of differences identified because they are likely to be the most significant from a financial statement user's perspective.

presentation of financial statements, segment reporting, business combinations, consolidation policy, and certain transition provisions.

The significance of the types of differences in the categories described above in any particular case would depend on a number of factors. For example, even if the recognition and measurement requirements of two standards that cover the same item are very different, those differences might not be significant to a financial statement user if the enterprises being compared rarely, if ever, engage in transactions giving rise to that item. To illustrate, for purposes of comparing IASC-based and U.S. GAAP-based financial statements, a financial statement user likely would be more concerned about differences in the recognition and measurement of construction contracts when comparing the financial statements of two shipbuilding enterprises, one based on IASC standards and one based on U.S. GAAP, than when comparing the financial statements of two financial institutions, one based on IASC standards and one based on U.S. GAAP.

On the other hand, differences in recognition and measurement requirements related to transactions or events that are common to most enterprises could create pervasive differences in the line items and amounts reported by enterprises following IASC standards and those following U.S. GAAP for one or more reporting periods. For example, differences in revenue recognition or income tax accounting are likely to impact comparisons of the financial statements of the vast majority of enterprises. Unless additional information is provided elsewhere in the financial statements to enhance comparability, differences generally contribute to increased uncertainty for financial statement users in assessing and making investment decisions.

Comparisons may be affected for a single reporting period or over a number of reporting periods. With the exception of the few instances in which an item may be required to be recognized under one set of standards but never recognized under the other, the effects of many of the differences described above and illustrated in the next section will eventually vanish. That is, if, for example, one standard requires a cost to be expensed whereas the other requires the same cost to be amortized over a specified period, comparability in the reporting periods in which the cost is initially recognized and subsequently amortized will be hindered. However, once the cost is fully amortized, the effect on the financial statements of the difference in accounting for that cost will disappear. As a result, a particular difference in requirements might create more than one type of difference in reported results. For example, different recognition criteria might not only result in differences in how an item is recognized (for example, whether as an expense or an asset), but also might impact the period or periods in which that item is recognized. For that reason, actual differences identified in the comparative analysis may overlap in the five categories of differences described above. The next section of this chapter highlights some examples of the more significant differences in those five categories from the perspective of assessing comparability of financial information that would be provided under IASC-based and U.S. GAAP-based financial statements that cover the same reporting period.

1. Recognition Differences

As noted above, different recognition requirements between an IASC standard and its U.S. GAAP counterpart can create differences in whether, how, and when an item is reported in financial statements. The following examples illustrate those differences.

Recognized or Unrecognized

Some types of recognition differences would require an item to be recognized under one standard, but the same item would be required to go unrecognized under its counterpart standard. One example of that type of difference between IASC standards and U.S. GAAP is the recognition requirements for leases. In the United States, the issue of whether to recognize a leased item as an asset of the lessee or keep it off-balance-sheet with periodic rental charges flowing through the income statement has been fiercely debated and generally centers on different perceptions of the substance of the lease transaction, that is, when to conclude that the lessor transfers the risks and rewards of ownership of the leased asset to the lessee as a result of the lease agreement. Because of the controversy over that issue and partly because there is a propensity in the United States to structure lease transactions so as to avoid capitalization, U.S. GAAP provides a great deal of detailed guidance for accounting for lease transactions.

In comparing IAS 17, *Leases,* and FASB Statement No. 13, *Accounting for Leases,* many similarities can be identified. Both standards define leases similarly, and both require that a leased item be recognized as an asset on the lessee's balance sheet for leases under which substantially all the risks and rewards incident to ownership of the leased asset are transferred to the lessee (that is, for leases classified as capital leases (Statement 13) or finance leases (IAS 17)). No asset is recognized by the lessee if the lease is classified as an operating lease. However, IAS 17's implementation guidance for determining lease classification is less detailed than the corresponding Statement 13 guidance. For example, Statement 13 provides specific quantitative criteria to be met in determining whether a leased item should be capitalized. IAS 17 relies instead on management's assessment of the ''substance'' of the lease transaction.

It is difficult to predict how often leased items that would be capitalized under Statement 13 would also be capitalized under IAS 17. Statement 13's ''bright line'' approach removes some of the judgment that otherwise would be necessary to determine the substance of the lease transaction (that is, whether it is a capital lease or an operating lease). However, it also permits lease transactions to be structured to meet (or to avoid meeting) the specified criteria. IAS 17's approach provides more room for judgment in determining the substance of the lease transaction, and it is difficult to know if all enterprises applying IAS 17 would interpret ''substance'' similarly. However, the IAS 17 approach may result in balance sheet recognition of a lease that is in substance a capital lease but that does not meet the criteria in Statement 13. Whether or not the same item is recognized or unrecognized can create obvious comparability problems for financial statement users, especially when trying to evaluate an enterprise's capital structure, determine financial ratios, and measure its performance.

In the comparative analyses that follow, there are relatively few areas in which the same item would be required to be recognized under one standard but would be required to be unrecognized under its counterpart. However, the following are some examples.

Income taxes. Differences between IAS 12, *Income Taxes,* and FASB Statement No. 109, *Accounting for Income Taxes,* can lead to an item being recognized under one standard but not the other. For example:

- Statement 109 prohibits and IAS 12 requires recognition of deferred taxes for temporary differences related to (a) foreign currency nonmonetary assets when the reporting currency is the functional currency and (b) intercompany transfers of inventory or other assets remaining within the consolidated group.

Employee benefits. Differences between IAS 19, *Employee Benefits,* and related U.S. GAAP can lead to an item being recognized under one set of standards but not the other. For example:

- Expense for equity compensation benefits (such as employee stock options) is not recognized under IAS 19. U.S. GAAP requires recognition of an expense for certain types of equity compensation benefits.

Same Item, Different Accounting Treatment

A more common type of difference identified in the comparative analyses is that in which the two standards specifically require the same item to be treated differently. The following example illustrates that type of difference.

Under U.S. GAAP, all internally generated research and development costs are required to be expensed as incurred. Under IAS 38, *Intangible Assets,* all costs identified as research costs are to be expensed; however, costs identified as development costs are to be capitalized if they meet specified criteria. Thus, the financial statements of an enterprise with development costs following IASC standards would not be comparable to those of an identical enterprise following U.S. GAAP. Using IASC standards, the enterprise would report higher income in the year that development costs are incurred and lower income in subsequent years than it would if it accounted for the same costs under U.S. GAAP. Comparability of cash flows also would be permanently impacted because cash flows related to development costs under U.S. GAAP generally would be reported as operating cash flows, whereas under IASC standards those cash flows would be reported as cash flows related to investing activities. IASC-based financial statements would be comparable to U.S. GAAP-based financial statements only if all

costs for those expenditures are identified as research costs or if no development costs qualify for capitalization.

All other things being equal, capitalizing an item rather than expensing it as incurred can have a long-term impact on financial statement comparison and analysis of both the balance sheet and income statement. Financial results for identical enterprises will differ each year until a capitalized item is completely amortized. Further, the resulting differences in classification of reported cash flows will never reverse. Unless adequate information is provided to equate two otherwise identical enterprises or to track expensed items over time, it may be difficult to adjust for those differences.

Examples of areas in which there is a possibility of encountering different recognition treatments of the same item depending on whether IASC standards or U.S. GAAP is applied include the following areas identified in the comparative analyses.

Depreciation or amortization. IASC standards and U.S. GAAP differ in the treatment of adjustments to depreciation and amortization amounts that result from a change in depreciation or amortization method:

• Under IASC standards, the impact of a change in depreciation or amortization method is recognized as an adjustment to depreciation or amortization expense in current and prospective periods affected by the change. U.S. GAAP generally requires recognition in the current period of the cumulative effect of that type of change.

Construction contracts. Differences between IAS 11, *Construction Contracts,* and U.S. GAAP can result in different financial statement recognition for similar items:

• Differences in requirements to combine or segregate construction contracts can lead to differences in profit recognition for construction contracts depending on whether IAS 11 or U.S. GAAP is followed.

• IAS 11 requires the use of the percentage-of-completion method to recognize contract revenue and expenses if the outcome can be estimated reliably; otherwise, IAS 11 requires the use of the zero-profit method. U.S. GAAP requires, in certain situations, the use of the completed-contract method of accounting for contracts.

Leases. Recognition of profit or loss on certain sale-leaseback transactions can differ depending on whether IASC standards or U.S. GAAP is followed:

• Statement 13 generally requires profit or loss deferral on a sale-leaseback transaction that is classified as an operating lease. IAS 17, on the other hand, requires immediate profit or loss recognition for a sale-leaseback transaction classified as an operating lease if the sale transaction is established at fair value.

Employee benefits. Recognition differences can lead to noncomparability for certain types of employee benefits:

• IAS 19 requires prior service cost related to retirees and active vested employees to be expensed, whereas U.S. GAAP requires that prior service cost be amortized over the expected service life of existing employees.

• Under IAS 19, a liability for a benefit obligation would be recognized for certain multiemployer plans that would not qualify for similar recognition under U.S. GAAP. Rather, the employer's contribution to those multiemployer plans would be recognized under U.S. GAAP as an expense in the period that the related employee services are rendered.

Business combinations. Treatment of certain items acquired in a business combination accounted for as a purchase can have a significant impact on the comparability of IASC-based and U.S. GAAP-based financial statements:

• In-process research and development acquired in a business combination is capitalized under IAS 22, *Business Combinations,* (either separately or as part of goodwill). Under U.S. GAAP, the amount of the purchase price allocated to in-process research and development acquired in a business combination is expensed.

Borrowing costs. Although an alternative similar to U.S. GAAP is available under IAS 23, the effects of applying the benchmark treatment for accounting for borrowing costs would be quite different from the effects of applying U.S. GAAP:

• Enterprises following the benchmark treatment under IAS 23 would expense borrowing costs incurred related to the acquisition, construction, or production of an asset. Under U.S. GAAP, capitalization of those costs is required for qualifying assets.

Financial instruments. Differences between IAS standards and related U.S. GAAP can lead to different accounting treatments for the same financial instruments:

• IAS 32, *Financial Instruments: Disclosure and Presentation,* requires that mandatorily redeemable preferred stock be classified as a liability with its dividends recognized as expenses in the income statement. Under U.S. GAAP, mandatorily redeemable preferred stock is classified as neither a liability nor equity, and dividends are deducted from net income in arriving at income available to common stockholders.

• IAS 32 requires that the issuer of a financial instrument that contains both a liability and an equity element (such as convertible debt) classify the instrument's component parts separately. U.S. GAAP prohibits separate presentation of the liability and equity components of convertible debt unless warrants are detachable.

• The U.S. GAAP distinction between sales and secured borrowings is different from that in IAS 39. As a result, more asset transfers would qualify for sale accounting treatment under IAS 39 than would qualify for sale accounting treatment under U.S. GAAP.

Timing Differences

Even if two standards require the same item to be recognized and the same accounting treatment, different recognition criteria can result in recognition of the same item in a different reporting period. For example, IAS 12 requires recognition of the effects of a change in tax laws or rates when the change is ''substantively enacted.'' Thus, recognition may precede actual enactment by a period of several months. Statement 109 requires recognition upon actual enactment, which, in the United States, is the date that the president signs the tax law.

Timing of recognition may differ between IASC standards and U.S. GAAP for other items as well. Some examples follow.

Business combinations. There are differences between IASC standards and U.S. GAAP for negative goodwill, goodwill, and acquired intangible assets that will affect the timing of recognition:

• The timing of income statement recognition of negative goodwill may differ as a result of different methods for amortizing negative goodwill specified in IAS 22 and APB Opinion No. 16, *Business Combinations.*

• The periods over which amortization expense related to goodwill and intangible assets is recognized may differ between IASC standards and U.S. GAAP.

Discontinuing operations. Presentation and recognition and measurement requirements differ between IAS 35, *Discontinuing Operations,* and related U.S. GAAP:

• Timing of segregation of discontinuing operations from continuing operations may differ depending on whether IAS 35 or U.S. GAAP is followed.

• Timing of recognition of gain or loss on discontinuance and income or loss from activities of the discontinuing operation may differ depending on whether IAS 35 or U.S. GAAP is followed.

Provisions and contingencies. Recognition requirements under IAS 37, *Provisions, Contingent Liabilities and Contingent Assets,* differ from requirements in U.S. GAAP:

• Timing of recognition of provisions under IAS 37 may differ from the timing of recognition of liabilities and contingent losses under FASB Statement No. 5, *Accounting for Contingencies.*

• The timing of recognition of liabilities associated with a restructuring may differ due to different recognition thresholds.

Impairment. Differences in approach between IAS 36, *Impairment of Assets,* and FASB Statement No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of,* can lead to differences in timing of recognition for impairment losses:

• Timing of recognition of impairment losses may differ due to different recognition thresholds.

Interim financial reporting. Because of different approaches to preparing interim financial information, certain items may be recognized in different periods and at different amounts depending on whether IAS 34, *Interim Financial Reporting,* or U.S. GAAP is followed:

• The U.S. GAAP requirements related to timing of recognition of certain accruals made for interim reporting purposes differ from the requirements of IAS 34, including requirements related to purchase price variances and volume or corporate cost variances expected to be absorbed by year-end and accrual or deferral of costs clearly expected to benefit two or more periods.

2. Measurement Differences

Differences in whether and when an item is recognized in the financial statements are not the only differences that can raise comparability issues. How items are valued, especially subsequent to initial recognition, can impede straightforward comparison.

Subsequent Measurement

One example of a measurement difference relates to the requirements for subsequent measurement of impaired assets. IAS 36 and Statement 121 take significantly different approaches to reversals of impairment losses. IAS 36 requires impairment losses to be reversed on assets (excluding goodwill) when certain impairment indicators reverse, provided that the estimates used to determine those assets' net selling prices and values in use have changed. IAS 36 requires impairment losses on goodwill to be reversed if certain other conditions are met. In contrast, Statement 121 prohibits reversal of impairment losses in all circumstances for assets held and used. Thus, the carrying amounts of certain assets may differ depending on whether IASC standards or U.S. GAAP is followed.

Other examples of possible differences in measurement between IASC standards and U.S. GAAP are identified below.

Leases. Different measurement guidance in IAS 17 and U.S. GAAP can lead to different amounts reported for lease transactions:

• There are differences between IAS 17 and U.S. GAAP related to the calculation of minimum lease payments and the rate used to discount minimum lease payments.

Employee benefits. Although similar in many ways, some aspects of measurement of employee benefits differ between IAS 19 and U.S. GAAP:

• In measuring the employer's benefit obligation, IAS 19 permits an enterprise to anticipate changes in future postemployment benefits based on its expectations of changes in the law that would impact variables such as state medical or social security benefits. U.S. GAAP expressly prohibits anticipating changes in the law that would affect those variables.

• U.S. GAAP requires recognition of a minimum liability on the balance sheet equal to at least the unfunded accumulated pension benefit obligation. IAS 19 does not.

Provisions. Comparability of amounts recognized for certain types of liabilities can be impacted by differences between IASC standards and U.S. GAAP:

• IAS 37 provides a variety of recognition criteria for different items that may enter into the measurement of a provision. Consequently, the amounts of provisions may vary among enterprises that apply IAS 37 and between those enterprises and those that apply U.S. GAAP.

Discontinuing operations. A fundamentally different approach to measurement of discontinuing operations can make comparisons of IASC-based and U.S. GAAP-based financial statements difficult:

• Under IAS 35, the *actual* operating results of a discontinuing operation are reported as part of discontinuing operations when incurred. Under APB Opinion No. 30, *Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions,* the *estimated* operating results of a discontinuing operation are included in the measurement for the expected gain or loss on disposal.

Impairment. Judgment is required in applying both the U.S. standard and IASC standard on impairment. However, specific measurement differences will contribute to the potential for noncomparability:

• IAS 36 requires an impairment loss to be measured as the amount by which an asset's carrying amount exceeds its impairment recognition trigger (the higher of net selling price or value-in-use), whereas Statement 121 requires an impairment loss to be measured as the amount by which an asset's carrying amount exceeds its fair value.

Borrowing costs. Measurement differences can affect the comparability of items even when similar recognition principles apply:

• Enterprises choosing to capitalize borrowing costs under the allowed alternative in IAS 23 (which is similar to the requirement to capitalize those costs under U.S. GAAP) might measure those costs differently than enterprises following U.S. GAAP if they include foreign currency exchange gains and losses related to those costs.

Interim financial reporting. Different measurement principles for inventories can affect amounts reported in interim periods:

• U.S. GAAP does not require recognition in interim periods of inventory losses from market declines that reasonably can be expected to be restored in the fiscal year. IAS 34 does.

Financial instruments. There are differences in the measurement requirements between IAS 39, *Financial Instruments: Recognition and Measurement,* and related U.S. GAAP for the same financial instruments:

• IASC standards provide for classification as trading, available-for-sale, or held-to-maturity for all types of financial assets. U.S. GAAP applies those classifications only to securities. As a result, measurement of some financial assets would differ depending on whether IASC standards or U.S. GAAP was followed.

• IAS 39 requires that hedging gains and losses from cash flow hedges of firm commitments and of forecasted transactions be included as part of the initial measurement of the cost basis of the related hedged item (basis adjustment). U.S. GAAP does not permit basis adjustment for cash flow hedges. Instead, it requires that hedging gains and losses on cash flow hedges be recorded in other comprehensive income when they occur and reclassified into earnings over the period that the hedged item affects earnings.

• Certain commodity contracts for which an enterprise normally takes delivery would be initially and subsequently measured at historical cost under IAS 39, with any gain or loss recognized as part of the cost of the goods acquired when the contract is settled. Under U.S. GAAP, those contracts would be measured at fair value unless no market mechanism exists to net settle the contract.

3. Alternatives

Comparability between IASC-based and U.S. GAAP-based financial statements may be hindered if one standard explicitly permits a choice among alternative approaches for a particular topic and the other (1) requires a single approach that is somewhat like one of the alternatives or (2) also permits a similar choice of approaches. Such alternatives may relate to recognition, measurement, display, or disclosure requirements. Free choice alternatives not only create problems in comparing financial statements based on different standards, but also in comparing financial statements based on the same set of standards.

In some cases, the IASC standard permits a choice and U.S. GAAP does not. For example, under IAS 16, *Property, Plant and Equipment,* an enterprise can choose to measure its property, plant, and equipment following either the benchmark treatment, that is, to carry those assets at cost (less accumulated depreciation and accumulated impairment losses), or the allowed alternative treatment, that is, to periodically revalue its property, plant, and equipment to fair value (less subsequent accumulated depreciation and subsequent accumulated impairment losses). Revaluation increases under the allowed alternative treatment are credited directly to equity as revaluation surpluses unless they reverse a revaluation decrease that was previously recognized as an expense, in which case they are credited to income. Revaluation decreases are first charged against any surpluses for the same asset, then they are recognized as expenses. Upon disposal of a revalued asset, the amount recognized in the income statement under IAS 16 as gain or loss on disposal differs from that which would be recognized for a similar asset that was accounted for at historical cost. IAS 16 also permits a choice for presentation of revalued assets: gross assets and accumulated depreciation can be proportionately restated to equal the revalued amount or the gross assets and accumulated depreciation accounts can be eliminated and the net revalued amount presented.

U.S. GAAP requires accounting similar to IAS 16's benchmark treatment and does not permit revaluation accounting for fixed assets. The financial statements of an enterprise choosing to revalue its assets under the IASC standard would not be readily comparable to those of an enterprise following U.S. GAAP, nor would they be comparable to the financial statements of an enterprise following IASC standards that chose not to revalue its assets. The impact of revaluation on the financial statements may not be obvious or easy to trace, depending on how often assets are revalued, how they are grouped for revaluation, and what choices are made for their presentation in the balance sheet. Nor can financial statements prepared under U.S. GAAP be easily adjusted to compare with revalued amounts for property, plant, or equipment in IASC-based financial statements. For financial statement users making comparisons, there may be uncertainty related to the determination of revalued amounts, the validity of certain asset ratios, and the ability to evaluate performance.

In other cases, U.S. GAAP permits a choice of alternative approaches and the IASC standard does not. For example, IAS 11 and AICPA Statement of Position 81–1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts,* both address the topic of how a construction contractor calculates the components of

income earned. SOP 81–1 explicitly permits a choice between two approaches: a revenue-cost approach and a gross-profit approach. IAS 11 requires the revenue-cost approach.

Sometimes both sets of standards permit a similar range of alternatives on a particular topic. For example, IAS 2 and ARB No. 43, Chapter 4, ''Inventory Pricing,'' permit a similar range of accounting choices in measuring the cost of inventory. Those choices include the use of the retail or standard cost method in estimating the cost of inventory and the use of specific identification; first-in, first-out; average cost; or last-in, first-out in reporting the flow of cost. Identical accounting among enterprises applying the IASC standard or among enterprises applying U.S. GAAP or between those applying the IASC standard and those applying U.S. GAAP will be achieved only by coincidence.

Examples of other areas identified in the comparative analyses that illustrate the provision of alternatives within IASC standards, U.S. GAAP, or both include the examples identified below.

Cash flow statements. Although the two standards are mostly similar, there are some areas in which the requirements of IAS 7, *Cash Flow Statements,* and those of FASB Statement No. 95, *Statement of Cash Flows,* differ:

• IAS 7 permits a choice of classifying (1) dividends and interest paid or received as operating cash flows or (2) interest or dividends paid as financing cash flows and interest or dividends received as investing cash flows. Statement 95 requires that the interest paid and dividends received be classified as operating cash flows and that dividends paid be classified as financing cash flows.

Correction of an error and accounting changes. Differences in the permitted alternatives to accounting for error corrections and accounting changes can impact the comparability of IASC-based and U.S. GAAP-based financial statements:

• In accounting for a fundamental error, an enterprise following the benchmark treatment in IAS 8, *Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies,* would correct the error by an adjustment to the opening balance of retained earnings for the earliest period presented. However, under IAS 8's allowed alternative, fundamental errors are corrected by inclusion in net income and by supplemental disclosure. U.S. GAAP requirements for correction of an error are identical to IAS 8's benchmark treatment.

• The IAS 8 benchmark treatment for accounting changes requires restatement of prior periods. However, IAS 8 also permits the application of either the cumulative-effect method or the prospective method if the amounts needed to restate prior periods are not ''reasonably determinable.'' [57] Under U.S. GAAP, the general rule is to use the cumulative-effect method for changes in accounting principle, although restatement of prior periods is required for certain changes. In specific circumstances, U.S. GAAP allows changes in accounting principle to be handled prospectively. Given those differences, comparability of net income and retained earnings amounts could differ significantly between financial statements prepared under IAS 8 and those prepared under U.S. GAAP.

Foreign currency translation. Alternatives provided under IAS 21, *The Effects of Changes in Foreign Exchange Rates,* differ from the requirements in FASB Statement No. 52, *Foreign Currency Translation:*

• IAS 21 permits two methods of accounting for exchange losses on a liability for the recent acquisition of an asset invoiced in a foreign currency: (1) charge those exchange losses to expense or (2) add the exchange losses to the cost of the asset when the related liability cannot be settled and there is no practical means of hedging. Statement 52 requires that those exchange losses be expensed in all cases.

• IAS 21 also permits alternatives in translating goodwill and fair value adjustments to assets and liabilities that arise from purchase accounting for the acquisition of a foreign entity for which the foreign currency is the functional currency. Under IAS 21, use of either the current exchange rate or the historical exchange rate is permitted. When the foreign currency is the functional currency, Statement 52 requires use of the current exchange rate to translate all balance sheet items, including goodwill and fair value adjustments.

Borrowing costs. Depending on the alternative accounting treatment chosen under IAS 23, the accounting for those costs under IASC standards can differ significantly from their accounting under U.S. GAAP:

• IAS 23 allows enterprises to choose between two methods of accounting for borrowing costs. The benchmark treatment requires that enterprises expense all borrowing costs in the period in which they are incurred. The allowed alternative treatment requires capitalization of borrowing costs as part of the cost of an asset to the extent the borrowing costs are attributable to the acquisition, construction, or production of a qualifying asset. FASB Statement No. 34, *Capitalization of Interest Cost,* requires an approach similar to IAS 23's allowed alternative.

Investments in associates. In the financial statements of an enterprise without subsidiaries, accounting for an investment that gives the investor significant influence can differ between IASC-based financial statements and U.S. GAAP-based financial statements:

• IAS 28, *Accounting for Investments in Associates*, permits investments in associates to be measured using the equity method, cost, or fair value in the financial statements of entities without subsidiaries and requires disclosure of what would have been the effect had the equity method been applied. APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, requires the use of the equity method regardless of whether an entity has subsidiaries.

Joint ventures. An enterprise following IASC standards has a choice in accounting for investments in joint ventures, whereas U.S. GAAP specifies a single method:

• IAS 31, *Financial Reporting of Interests in Joint Ventures*, permits use of either the equity method or proportionate consolidation method of accounting for interests in corporate joint ventures. Opinion 18 generally requires the use of the equity method.

Intangible assets. Like the choice for subsequent measurement for property, plant, and equipment under IAS 16, enterprises following IAS 38 can choose to revalue certain intangible assets:

• IAS 38 provides two methods for subsequent measurement of an intangible asset. The first requires that an acquired or internally generated intangible asset be carried at amortized cost less any accumulated impairment loss. That method is similar to accounting required by U.S. GAAP. The second method allows an intangible asset that has an active market to be revalued at regular intervals. U.S. GAAP does not permit revaluation accounting for intangible assets.

4. Lack of Requirements or Guidance

Comparability also is impacted when either the IASC standard or the closely related U.S. GAAP addresses an accounting area or class of transactions not explicitly addressed by the other. For example, U.S. GAAP provides guidance for a number of specialized industries and specialized transactions that are not specifically addressed in IASC standards. IASC standards currently lack guidance for the unique aspects of insurance and rate-regulated enterprises; not-for-profit entities; the extractive (for example, oil and gas), health care, and entertainment industries; agricultural and forest products; and employee stock-compensation plans.[58]

Although U.S. GAAP in total addresses more topics than IASC standards do, several IASC standards address topics that are not covered by U.S. GAAP. Many of those are topics in which IASC standards provide definitions of terms that are not explicitly defined in U.S. GAAP or that relate to display or disclosure requirements not specified in U.S. GAAP.[59] There are some topics identified in IASC standards that provide recognition or measurement guidance not found in U.S. GAAP. For example, IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance*, provides accounting standards for government grants and other forms of government assistance to business enterprises in a single standard. No U.S. standard comprehensively addresses that topic.

Other examples of areas in which one standard provides guidance but the other does not follow.

[57] In the absence of specified transition provisions, an enterprise following IASC standards must follow the guidance in IAS 8. For first-time application of IASC standards, an enterprise would also look to the guidance provided in SIC Interpretation 8, *First-Time Application of IASs* as the Primary Basis of Accounting.

[58] The IASC currently has projects on its agenda to address accounting issues related to insurance enterprises and agriculture.

[59] While those items may not be addressed explicitly in U.S. GAAP, in some cases the IASC guidance is similar to established practice in the United States.

Inventories. IASC standards provide guidance in the areas of disclosure and accounting for the inventories of service providers. U.S. GAAP does not. U.S. GAAP provides specialized guidance on inventories related to the motion picture, software, and agricultural industries. IASC standards do not.

Accounting changes. IASC standards do not provide recognition guidance for changes in reporting entities. U.S. GAAP does.

Income taxes. U.S. GAAP provides guidance for aspects of income tax accounting related to (1) measurement of income taxes when there are different tax rates for distributed and undistributed income, (2) measurement of deferred income taxes in tax jurisdictions that have alternative minimum tax systems, and (3) accounting and disclosure of income taxes in the separately issued financial statements of an entity that is a member of a group that files a consolidated tax return. Those areas are not specifically addressed in IASC standards.

5. Other Differences

Some other specific differences between IASC standards and U.S. GAAP affect the basis for presentation of information contained in the financial statements. Those differences occur in the areas of business combinations, consolidation policy, presentation of financial statements, segment reporting, and certain transition provisions. Each of those is an area in which a different approach to preparing financial information is possible, and that has implications for the recognition, measurement, display, or disclosure of an entire class of transactions or events, rather than a single line item. The differences between IASC and U.S. accounting standards in those areas can result in pervasive differences in the information contained in the financial statements that generally are difficult, sometimes impossible, to compensate for with other information. Those examples are discussed below.

Business combinations. A business combination that is accounted for as a pooling of interests is reflected in subsequent financial statements by combining the financial statement items (including asset, liability, and equity items) of each enterprise, for the most part, at their existing carrying amounts. Under both IAS 22 and Opinion 16, if a business combination does not qualify as a pooling of interests, it must be accounted for under the purchase method. Under the purchase method, the subsequent financial statements of the acquirer will reflect the allocation of the purchase price (cost of acquisition) to the identifiable assets and liabilities acquired and any resulting goodwill (or negative goodwill) that arises from an excess of the cost of acquisition over the acquirer's interest in the fair value of the identifiable assets and liabilities acquired (or any excess of the acquirer's interest in the fair value of the identifiable assets and liabilities acquired over the cost of acquisition).

Under IAS 22, inability to identify the acquirer in a business combination is the overriding condition that must be met to use the pooling-of-interests method. In contrast, U.S. GAAP requirements specify 12 conditions that must be met in order for an enterprise to use the pooling-of-interests method to account for a business combination. If the 12 conditions are met, the pooling-of-interests method is required. It is likely that fewer business combinations would qualify to use the pooling-of-interests method under IAS 22 because an acquirer can be identified in most combinations. As a result, most business combinations would be accounted for by the purchase method under IAS 22.

The effects of using the purchase method under IAS 22 for a business combination that would qualify for the pooling-of-interests method under Opinion 16 would prove extremely difficult, if not impossible, to identify from financial statements. Further, many of the differences in application of the two standards would have lasting effects, that is, comparability (of what are otherwise similar transactions) could be impaired for long periods of time as a result of the long-term or even permanent nature of many of the differences. (The same can be said for any comparison of financial statements in which one enterprise uses the purchase method of accounting and the other uses the pooling-of-interests method, whether IASC standards or U.S. GAAP is used.) The issue is compounded by the fact that much of the information that might be useful for assessing similarities and differences (for example, footnote disclosures containing purchase price information) would no longer be presented after a limited number of years. [60]

Consolidation policy. In general, consolidated financial statements combine, line item by line item, the assets, liabilities, equity, income, and expenses of a parent company and its subsidiaries with adjustments for certain items that relate to transactions and balances between component companies of the consolidated group. Under both IASC standards and U.S. GAAP, the basis for determining whether to include an entity as a subsidiary in the consolidated financial statements is control. However, whereas IAS 27, *Consolidated Financial Statements and Accounting for Investments in Subsidiaries*, defines control, U.S. pronouncements have focused on ownership of a majority voting interest. Thus, in the United States, preparation of consolidated financial statements primarily has been based on an ownership criterion—majority of the voting interest—rather than on some other criterion to assess the presence of control. It is likely that more entities would qualify for consolidation under IAS 27 because of the IASC's emphasis on control rather than on ownership of a majority voting interest. [61] The presentation and content of informatin provided in the consolidated financial statements related to entities in which the parent company has an interest will differ significantly from that which would have been presented if the entities had not been consolidated.

Presentation of financial statements. IAS 1, *Presentation of Financial Statements*, provides guidance for determining whether it is necessary for an enterprise to depart from applying IASC standards in order to achieve fair presentation. If an enterprise determines that compliance with one or more IASC standards would result in the selection and application of an accounting policy that would result in misleading financial statements, it must depart from the IASC standard (or standards) and select an alternative accounting policy. Similar guidance is found in U.S. auditing standards. However, while the requirements for departure from standards may appear similar between the IASC approach and U.S. approach to achieving fair presentation, the application may differ due to conceptual differences between the two approaches.

Under the IASC approach, fair presentation may be interpreted as a concept that overrides IASC standards because, in some circumstances, fair presentation can only be achieved by departure from IASC standards. The concept of fair presentation, therefore, is not confined by reference to a particular accounting standards framework. Those enterprises following IASC standards that determine that a departure from IASC standards is necessary may instead use a different standard, for example, a standard that is part of the set of national standards of its own country, if it is consistent with the IASC Framework for the Preparation and Presentation of Financial Statements. Under the U.S. approach, the notion of fair presentation exists only by reference to U.S. GAAP and is achieved by adhering to U.S. accounting standards and practices. As a result, in the United States, the departure itself is presumed misleading and inaccurate. That presumption must be overcome by demonstrating and disclosing the need for a departure. In practice, departures from U.S. GAAP are almost nonexistent. In other countries, departures from domestic GAAP requirements have been much more common. Thus, there is the possibility that the interpretation of fair presentation in the context of IASC standards versus fair presentation in the context of U.S. auditing standards would differ. The impact of that difference likely would vary on a case-by-case basis.

Segment reporting. A significant difference between IAS 14, *Segment Reporting*, and FASB Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*, relates to the process the standards prescribe for identifying reportable segments. Under IAS 14, specific requirements governing the format and content of a reportable segment provide the basis upon which all reportable segments are identified. An enterprise must comply with

[60] The FASB has a project on its agenda to reconsider the existing standards on accounting for business combinations. Changes to the existing requirements that will reduce differences between IASC standards and U.S. GAAP in the accounting for business combinations are likely to result from that project. For example, the FASB has reached a tentative conclusion to require use of the purchase method for all business combinations.

[61] The FASB has a project on its agenda to reconsider the existing standards on accounting for consolidations. The February 1999 FASB Exposure Draft, *Consolidated Financial Statements: Purpose and Policy*, proposes a definition of control similar to that in IAS 27 as the basis for consolidation.

those requirements regardless of the form and content of information provided by an enterprise's internal financial reporting system (although IAS 14 presumes that the enterprise's internal reporting system ''normally'' would provide the information necessary to comply with IAS 14's requirements). In contrast, Statement 131 adopts a management approach that relies on the form and content of information provided by an enterprise's internal reporting system for identifying reportable segments. The management approach requires an enterprise to report those segments whose operating results are regularly reviewed by the enterprise's chief operating decision maker. Segments reported under IAS 14 and Statement 131 would be comparable if an enterprise chose to construct its internal information systems so as to comply with both standards. Otherwise, significant noncomparability can result between the primary segments identified under IAS 14 and the operating segments identified under Statement 131.

Beyond identification of reportable segments, fundamental differences between the IAS 14 approach and the Statement 131 approach have implications for the measurement of reported segment information, even if the segments identified under IAS 14 and Statement 131 are comparable. For example, IAS 14 requires that an enterprise report ''a measure of segment result'' for each segment using the same basis of measurement (that is, accounting policies) used in the consolidated financial statements. Statement 131 requires disclosure of ''a measure of profit or loss.'' The measure of segment profit or loss disclosed in the financial statements is the measure reported to the chief operating decision maker, even if that measure is on a basis that differs from the basis used in the consolidated statements. As a result, it is unlikely that the measure of profit or loss disclosed for a particular segment by an enterprise following Statement 131 would be the same as the measure of segment result that would have been disclosed had the same enterprise followed IAS 14. As with identification of reportable segments, unless internal information systems are designed to comply with both standards, segment disclosures of enterprises following U.S. GAAP would differ significantly from those of enterprises following IASC standards. Further, more diversity also is likely among enterprises following Statement 131 than among those following IAS 14 because of the differences in approach.

Transition provisions. Although not always likely to create permanent differences, transition provisions are one area that may cause some comparability difficulties when comparing financial statements both among enterprises following IASC standards and between those following IASC standards and those following U.S. GAAP. That is particularly true for the transition provisions that relate to the IASC standards that were revised as part of the core standards project because a number of them are not yet effective and the effects of transition have not yet been reported in financial statements. The effects of transition are to be expected for those enterprises applying an IASC standard for the first time; however, transition issues can also arise for those enterprises that followed IASC standards issued prior to the core standards project when they adopt the revised standards that cover the same area.

For example, the transition provisions in IAS 22 (1998) require that IAS 22's new requirements be applied retrospectively. However, that requirement is more limited than it appears. That is because when IAS 22 was first revised in 1993, its transition provisions encouraged, but did not require, retrospective application (restatement). If not applied retrospectively, the balance of any preexisting goodwill was required to be accounted for in accordance with the revised standard from the date it was first effective. As a result of the transition provisions in the 1993 version of IAS 22, goodwill that arose on a business combination consummated prior to January 1, 1995, and that was written off against equity (as permitted by the original IAS 22 (1983)) would never be reinstated.

There are other areas, such as leases and employee retirement benefits, in which transition provisions can have various effects on comparability. The problem is compounded by certain U.S. standards that also provide for long periods of transition accounting (for example, FASB Statement No. 87, *Employers' Accounting for Pensions*). The effect of different transition requirements can vary from one standard to another and may relate to timing, recognition, measurement, and disclosure. Thus, financial statement users should be aware of the potential for comparability issues related to transition and should refer to individual standards to gain a better understanding of specific differences.

Summary

There are differences between the accounting requirements of IASC standards and those of U.S. GAAP. The examples provided above illustrate several differences in five broad categories: recognition, measurement, alternatives, lack of requirements or guidance, and other differences. The resulting differences in reported financial information can be very significant from both a conceptual standpoint and a practical standpoint. Issues related to whether to recognize and how to measure items in the financial statements are among the most fiercely debated by standard setters. For financial statement users, compensating for the types of differences illustrated above is likely to be difficult because the information necessary to reconcile them may not be available. Some of those differences may be temporary—for example, differences in the timing of recognition may be short-term—while others may be permanent—for example, differences in accounting for a business combination can have indefinite effects on financial statement comparability.

There are less-significant types of differences between IASC standards and U.S. GAAP that are not discussed above that can make financial statement analysis and comparison complicated. For example, differences in presentation and display of similar items may require additional effort by financial statement users in making comparisons, and differences in definitions can lead to reported items that appear to be similar but may, in fact, be different. Those types of differences also are identified in the comparative analyses that follow.

Identifying all of the reasons why IASC standards and U.S. GAAP differ would be impossible. However, some of the reasons for the differences can be traced to the characteristics of the standard setters themselves. Although both the IASC and the FASB are concerned with improving the quality of financial reporting and increasing international comparability, they focus on different financial reporting environments. With FASB's primarily domestic focus, FASB standards overall tend to be fairly detailed, responding to the complexities of the U.S. economic environment and a demand from sophisticated financial-statement users for reliable, high-quality financial information. IASC standards, on the other hand, respond to a variety of national perspectives about what financial information is the most relevant and reliable for a particular topic.[62] Consequently, the IASC develops standards without focusing on any particular economic environment, which may contribute to the tendency of IASC standards to be more general. That generality may be an inevitable characteristic of international standards, and additional guidance at the national level may continue to be necessary even in those nations that use IASC standards as national standards.

The existence of differences between accounting standards and resulting reported financial information is less important than the extent to which the reported financial information meets the demands of its consumers, that is, the financial statement users, in the market in which the information is provided. That should be the basis for assessing the acceptability of IASC standards for use in cross-border securities listings in the United States. Nonetheless, the observations about differences between IASC standards and U.S. GAAP in this and the chapters that follow provide a starting point for making that assessment by comparing IASC standards to those that have been developed with the objective of meeting U.S. capital market needs.

After a discussion of the methodology and significant considerations used in undertaking the project, the remaining chapters in this report provide comparative analyses of specific IASC standards and their related U.S. GAAP counterparts.

[FR Doc. 00–4217 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–P

[62] Because the development of IASC standards and U.S. GAAP results from different objectives and processes, a qualitative assessment of the positive or negative impact of differences depends on the context in which the standards are intended to be applied. For purposes of the project, the U.S. capital market was chosen as the appropriate context for assessing the differences between IASC standards and U.S. GAAP. A similar project undertaken in a different country likely would make its comparison in the context of that country's capital market.

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 193–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Environment and Natural Resources Division, proposes to amend 28 CFR part 16 to exempt a system of records from certain provisions of the Privacy Act, 5 U.S.C. 552a. The system of records may contain information which relates to official Federal investigations and matters of law and regulatory enforcement. Accordingly, where applicable, the exemption is necessary to avoid interference with law and regulatory enforcement functions. Specifically, the Division proposes to exempt the Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003, from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), and (g) of the Privacy Act. These exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information.

DATES: All comments must be received by April 3, 2000.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, National Place Building, Room 1400 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill at (202) 307–1823.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act:

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12966, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: January 27, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552 and delegated to me by the Attorney General Order 793–78, it is proposed to amend 28 CFR Part 16 as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553, 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534: 31 U.S.C. 3717.

2. Section 16.92 is amended by revising paragraphs (a) and (b) to read as follows:

§ 16.92 Exemption of Environment and Natural Resources Division Systems—Limited Access.

(a)(1) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), (f) and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

(i) Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003.

(ii) [Reserved]

(2) These exemptions apply only to the extent that information in this system relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy, and therefore is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Environment and Natural Resources Division.

(b) Only that information that relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). Subsection (c)(3) requires an agency to provide an accounting of disclosures of records concerning an individual. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) Subsections (c)(4) (requiring an agency to inform individuals about any corrections made to a record that has been disclosed) and (g) (providing for civil remedies when an agency fails to comply with these provisions). These provisions are inapplicable to the extent that this system of records is exempted from subsection (d).

(3) Subsection (d). Subsection (d) requires an agency to allow individuals to gain access to a record about him or herself; to dispute the accuracy, relevance, timeliness or completeness of such records; and to have an opportunity to amend his or her record or seek judicial review. To the extent that information contained in this system has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could comprise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) Subsection (e)(1). Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish the agency's purpose. In the course of criminal or civil investigations, cases, or other matters, the Environment and Natural Resources Division may obtain information concerning the actual or potential violation of laws which are not strictly

within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) Subsections (e)(2). Subsection (e)(2) requires an agency to collect information to the greatest extent practicable from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others with whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) Subsection (e)(3). Subsection (e)(3) requires an agency to inform each individual whom it asks to supply information, on a form that can be retained by the individual, the authority which authorizes the solicitation, the principal purpose for the information, the routine uses of the information, and the effects on the individual of not providing the requested information. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identify of witnesses or confidential informants, or impeding the information gathering process.

(7) Subsection (e)(5). Subsection (e)(5) requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) Subsection (e)(8). Subsection (e)(8) requires agencies to make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) Subsections (f) and (g). Subsection (f) requires an agency to establish procedures to allow an individual to have access to information about him or herself and to contest information kept by an agency about him or herself. Subsection (g) provides for civil remedies against agencies who fail to comply with the Privacy Act requirements. These provisions are inapplicable to the extent that this system is exempt from the access and amendment provisions of subsection (d).

* * * * *

[FR Doc. 00–3117 Filed 2–22–00; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–4974]

Port Access Route Study; Strait of Juan de Fuca and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of preliminary study recommendations with request for comments.

SUMMARY: The Coast Guard announces preliminary study recommendations of a Port Access Route Study which is evaluating the continued applicability of and the need for modifications to the current vessel routing measures in and around the Strait of Juan de Fuca and adjacent waters. The goals of the study are to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. Preliminary recommendations indicate that marine transportation safety can be enhanced through several modifications to the existing vessel routing system and limited regulatory changes. The Coast Guard solicits comments on the preliminary recommendations presented in this document so we can complete our Port Access Route Study.

DATES: Comments and related material must reach the Docket Management Facility on or before April 24, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–4974), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

Additional information and charts showing the recommended changes will be posted on the Thirteenth Coast Guard District Web Site which can be accessed at http://www.uscg.mil/d13/pars/sjdf.html. If you do not have Web access, then you may obtain the additional information and paper copies of the charts by contacting LT Steve Wheeler at 206–220–7274, e-mail Swheeler@pacnorwest.uscg.mil.

FOR FURTHER INFORMATION CONTACT: For questions on this document, contact John Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, telephone 206–220–7272, e-mail Jmikesell@pacnorwest.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0416, e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please

include your name and address, identify the docket number for this notice (USCG–1999–4974), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Relationship to Other Projects

This notice of preliminary study recommendations with request for comments is not related to the advance notice of proposed rulemaking entitled ''Improvements to Marine Safety in Puget Sound-Area Waters'' [USCG–1998–4501](64937, November 24, 1998).

Definitions

The following definitions should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Regulated Navigation Area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Separation Zone or line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined width in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Why Is the Coast Guard Conducting This Port Access Route Study (PARS)?

A PARS was needed to review and analyze existing vessel routing measures and other traffic management tools currently used at the entrance to and in the Strait of Juan de Fuca and adjacent waters including Haro Strait, Boundary Pass, Rosario Strait, and the Strait of Georgia. Study results were to include recommended changes to these existing measures and tools.

The study area encompasses waters managed jointly by the United States and Canadian Coast Guards. Joint waterway management is accomplished primarily through the Cooperative Vessel Traffic System (CVTS). Under the CVTS Agreement, vessel traffic transiting the study area is managed by Vessel Traffic Centers located at Tofino and Victoria, BC, Canada, and Seattle, WA, irrespective of the International Boundary. The CVTS has active radar and radio coverage of all existing TSSs within the study area, including Boundary Pass and Haro Strait.

In addition to the CVTS, there are other vessel routing measures and traffic management tools in place to enhance navigation safety for vessels transiting the study area. They include, but are not limited to: TSSs, pilotage requirements, RNAs, precautionary areas, VTS special areas, the aids to navigation system, International Regulations for Prevention of Collisions at Sea (COLREGS), and an ATBA. The CVTS uses many of these tools to manage traffic effectively and safely.

Preliminary recommendations include modifications to vessel routing measures in and around the Strait of Juan de Fuca and adjacent waters including Haro Strait, Boundary Pass, Rosario Strait, and the Strait of Georgia. These recommendations also include modifications and/or additions to a number of Vessel Traffic Service Special Areas.

When Did the Coast Guard Conduct the PARS?

We announced the PARS in a notice published in the **Federal Register** on January 20, 1999 (64 FR 3145). We will finish the PARS after receipt and review of the comments received in response to this notice.

What Data Did the Coast Guard Use To Help Conduct the PARS?

We reviewed various studies and data collected both in-house and by other organizations on vessel traffic patterns and density, and risks associated therewith. U.S. Coast Guard sources included the latest Waterways Analysis and Management System (WAMS) reports for the Strait of Juan de Fuca, Haro Strait and Boundary Pass, Rosario Strait, Strait of Georgia, and Admiralty Inlet. Another data source was the study titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State,'' commonly referred to as the ''Puget Sound Additional Hazards Study'' or the ''Volpe Study.'' U.S. and Canadian VTSs provided vessel traffic data throughout the study area. The Olympic Coast Marine Sanctuary Manager utilized portions of this traffic data to conduct further track analysis in the vicinity of the Traffic Lane Separation Lighted Buoy ''J'' (Juliet Buoy) and Duntze Rock.

Eleven letters were received in response to the published notice of the study. Another five comments were recorded from oral presentations made at the public meeting we conducted on May 12, 1999 (64 FR 18651, April 15, 1999).

The U.S. Coast Guard met with Canadian Coast Guard and Transport Canada representatives to discuss and define issues. Input was solicited from the maritime industry and other potentially affected parties.

Why Is the Coast Guard Publishing These Preliminary Recommendations?

Because of the lack of a substantive number of comments to the original notice and our strong desire to engage the public in the study process, we decided to ask for comments on the issues and recommendations presented in this notice. Our recommendations are purposely not exhaustive in their characterization of all the concerns and issues we considered. Rather, they provide readers with the essence of proposed modifications and their primary rationale so that readers may help us refine these recommendations and proposals through constructive comments.

What Is the Existing Traffic Management Safety Regime?

For this study, we divided the geographic area into six discrete waterway segments. Each segment and its existing traffic management system is briefly described as follows:

1. Entrance to Strait of Juan de Fuca. The TSS at the entrance consists of a forked configuration with approaches from the west and southwest. Each approach consists of inbound and outbound traffic lanes with a separation zone in its center. An ATBA offers protection to critical inshore habitats of the Olympic Coast National Marine Sanctuary that abuts the southern approach of the TSS on its east side. The Tofino Vessel Traffic Service (Tofino) manages traffic in this area.

2. Cape Flattery to Race Rock. The TSS in this area consists of a one-way westbound and a one-way eastbound traffic lane with a separation zone between them. The lanes are of a uniform one-mile width. At its western end, these lanes link with the forked approaches to the TSS. The TSS is slightly offset to the south of the U.S./Canadian border. This portion of the TSS has a 22°-left dogleg in the inbound lane at 124°W. The separation zone north of Twin Rivers flares to about three miles in width, then tapers in either direction to about 1 mile in width. Tofino manages traffic in the Strait west of 124°40′W and the Puget Sound Vessel Traffic Service (PSVTS) manages traffic east of 124°40′W.

3. Port Angeles Precautionary Area—Race Rocks to New Dungeness and North to Discovery Island. This area includes a 2-mile diameter precautionary area with the Cape Flattery to Race Rocks TSS connecting from the west, a short TSS from Port Angeles connecting from the south, and a longer TSS from Victoria, BC, connecting from the north. All connecting TSSs have inbound and outbound traffic lanes with separation zones between them. The western TSS provides the lanes leading inbound from and outbound to sea through the Strait of Juan de Fuca. The southern TSS directs traffic to and from the pilot station off Port Angeles. The PSVTS manages traffic in this area. The northern TSS directs traffic to and from the Canadian pilot station off Victoria, BC. Another TSS, leading northeast from the Victoria pilots station, provides a link to Haro Strait. The Victoria Vessel Traffic Center (VVTC) manages vessel traffic north and east of Race Rocks. The area east of New Dungeness Spit and north to the San Juan Islands contains intersecting TSSs with associated precautionary areas which provide for the orderly flow of traffic between the Strait of Juan de Fuca, Admiralty Inlet, Rosario Strait, and Haro Strait. The PSVTS manages traffic in this area.

4. Haro Strait and Boundary Pass. There are no formalized traffic lanes for these waters, but the CVTS oversees vessel movements by utilizing full radar and VHF coverage in these joint U.S./Canadian waters. In addition, the ''Turn Point Tanker Safety Area'' places operating restrictions on tankers of 40,000 DWT or greater when rounding this partially blind turn. VVTC manages traffic in this area.

5. Rosario Strait and Guemes Channel. Rosario Strait has a single two-way traffic lane with no separation zone. There are circular precautionary areas at the northern and southern entrances to the Strait. The northern precautionary area leads to a TSS which routes traffic to and from the Strait of Georgia. The southern precautionary area is linked to two traffic lanes. One routes traffic to and from the west, and the other routes traffic to and from the south through Admiralty Inlet. There are no designated traffic lanes in Guemes Channel. The PSVTS manages traffic in Rosario Strait and Guemes Channel. Traffic is subject to the VTS Special Area regulations listed under 33 CFR 161.13 and 161.55. These regulations place operating restrictions on certain classes of vessels when meeting, crossing or overtaking other large vessels in these constricted waters.

6. Strait of Georgia. The VVTC manages the TSS in the Strait of Georgia. The TSS consists of northbound and southbound traffic lanes with a separation zone between them. A break in the TSS between Active Pass and Roberts Bank provides for crossing traffic and traffic to and from Delta Port and the Tsawwassen Ferry Terminal. Another break in the TSS at the northern juncture of Boundary Pass provides for ingress and egress to Boundary Pass. To the south, between Sucia Island and Alden Bank, the TSS resumes and narrows, continuing to a circular precautionary area off Matia Island and then to its junction with the precautionary area at the north end of Rosario Strait. Northwest of its juncture with Boundary Pass, the northbound traffic lane and most of the separation zone lie in U.S. waters. The southbound lane lies in Canadian waters. Southeast of the juncture with Boundary Pass, the TSS is completely in U.S. waters.

Study Recommendations

From the information examined, we identified general and geographic-specific issues where waterway safety improvements could be realized. Each issue is discussed and recommendations presented. Comments are particularly solicited with respect to these recommendations.

A. General Issues Relevant to the Entire Study Area

Issue #1: Should compliance with the TSS be mandatory in U.S. waters?

Discussion: Participation with the VTS is compulsory for certain classes of vessels; however the actual use of the TSS is not specifically mandated under U.S. regulations. The VTS has the ability, on a case-by-case basis, to require a specific vessel to use the TSS. This is accomplished as a ''VTS Direction'' under 33 CFR 161.11.

Over time, the CVTS has found it desirable to require only larger, deep draft vessels that can maintain a speed of 12 knots or more to use the TSS. Experience has shown that almost all of these vessels voluntarily choose to follow the TSS. On the rare occasion that a larger, deep draft vessel attempted not to follow the TSS, the CVTS has succeeded in encouraging or directing the vessel to do so.

The Canadians, through a modification to Rule 10 of the COLREGS, require all vessels 20 meters or over to follow the TSS when it is safe to do so. However, they do not aggressively enforce this provision, considering it not desirable to require smaller and/or slower moving vessels to follow the lanes. Mixing vessels of large disparate speeds significantly increases the frequency of vessel interactions.

Recommendation: Do not make the TSS mandatory, as we do not consider regulatory imposition necessary to gain compliance. The current system of voluntary usage, combined with persuasion and existing regulatory tools, ensures that those vessels that should be in the traffic lanes actually are.

Issue #2: Should all traffic lanes, precautionary areas, and VTS special areas within the Puget Sound Area of Responsibility (AOR) be specified as waters where all or certain provisions of Rule 9 of the International Navigation Rules would apply?

Discussion: Conflicts periodically develop between large vessels following a TSS, narrow channel or fairway, and smaller recreational and fishing vessels. Oftentimes, when a deep draft vessel is forced to maneuver even slightly to avoid a smaller vessel in a narrow channel or fairway, the deep draft vessel must then follow a route that is sub-optimal from a navigation safety perspective. Also, when a deep draft vessel following a fairway or TSS is

forced to radically maneuver to avoid a smaller vessel, order and predictability are lost in that other surrounding vessels no longer know what to expect from the larger vessel.

Rule 10 of the COLREGS prohibits vessels engaged in fishing, sailing vessels, and vessels of less than 20 meters from impeding the safe passage of a power-driven vessel that is following a traffic lane. However, Rule 10 does not apply to the numerous precautionary areas that link the lanes together nor to fairways that do not have established traffic lanes. Rule 9 prohibits vessels of less than 20 meters, sailing vessels, and vessels engaged in fishing, from impeding the passage of a vessel that can safely navigate only within a narrow channel or fairway. The ''do not impede'' provisions of Rules 9 and 10 enhance the order, predictability, and safety of vessel movements. Deep draft vessels would be provided with optimum routing through the TSS.

Recommendation: Delineate and specify those waters within the VTS Puget Sound Area of Responsibility (AOR) in which all or certain provisions of Rule 9 of the International Navigation Rules would apply.

Issue #3: Should there be one common international frequency for bridge-to-bridge radio communications in the CVTS?

Discussion: Under U.S. regulations, all vessels 20 meters or over are required to guard VHF channel 13 when in U.S. waters. Channel 13 is the designated bridge-to-bridge radio frequency and is used to make passing arrangements and to clarify vessel intentions. There is no comparably designated bridge-to-bridge frequency in Canadian waters. The two governments must work together to establish one common bridge-to-bridge frequency, preferably channel 13, for all vessels operating within the CVTS, thus assuring timely and reliable communications between ships.

Recommendation: The U.S. and Canadian governments, through the Joint Coordinating Group of the CVTS, should develop internal policies that require the use of channel 13 for bridge-to-bridge communications within the CVTS area.

B. Geographic-Specific Issues

The following issues are best reviewed and comprehended when read in conjunction with the charts of the proposed changes that are posted on the Thirteenth Coast Guard District Web Site at http://www.uscg.mil/d13/pars/sjdf.html.

Entrance to Strait of Juan de Fuca

Issues #4a through 4f: Should we—

a. Extend the TSS at the entrance to the Strait of Juan de Fuca approximately 10 miles further offshore;

b. Center the separation zone at the entrance to the Strait of Juan de Fuca on the International Boundary;

c. Retain multiple approach lanes configured to maintain order and predictability for vessels entering or exiting the Strait;

d. Configure these lanes to the greatest extent possible to avoid customary fishing grounds;

e. Acknowledge the existence of an informal northwesterly traffic route by creating a new exit lane just north of the Juliet Buoy for vessels headed coastwise to Alaska; and

f. Expand the ATBA boundaries to the north and west to provide a greater buffer around Duntze Rock and offshore while still providing a protected route for slower moving vessels?

Discussion: All traffic entering the Strait of Juan de Fuca is funneled into the Strait through one of two short traffic lanes. The inbound traffic lane originating from the southwest may bring traffic within 1 mile of Duntze Rock. This convergence near the Juliet Buoy is in close proximity to the rocky shoreline of Cape Flattery, lies within the Olympic Coast National Marine Sanctuary, and funnels inbound southern traffic along the northern/western border of the ATBA.

It is customary practice for a large percentage of the slower moving traffic, often tugs and barges and small fishing vessels, to transit inbound and outbound south of the designated traffic lanes when on coastwise voyages to and from the south. This practice eliminates the need for slower moving southbound traffic to cross the traffic lanes, and numerous overtaking situations arising from disparate transit speeds. However, under the present configuration, this traffic is forced to transit extremely close to Duntze Rock, and may end up infringing on either the ATBA or the inbound traffic lane. A similar practice of transiting outside the lanes is observed and condoned for small/slower vessels transiting north of the lanes in Canadian waters.

Traditional commercial and sports fishing areas are in and adjacent to the traffic lanes at the entrance to the Strait. Occasionally, fishing vessels in the area create a conflict for vessels following the TSS, particularly during periods of reduced visibility.

Both the move of the convergence zone 10 miles to the west and the shift of the entrance point to the north would help create a ''buffer zone'' between the southernmost TSS lane and Duntze Rock and the nearby ATBA. This relocation provides significant sea room for conflict resolution as vessels converge toward the entrance of the Strait, thereby improving order and predictability for each entry and exit lane. Moving the northern border of the ATBA to a consistent 7000 yards south of the International Boundary and 4000 yards south of the southernmost edge of the TSS would provide an improved safety buffer for those smaller, slower moving vessels that choose to transit south of the TSS. Continuing this buffer area parallel to the TSS until a point at 124°55′ would allow sufficient room for slower moving vessels to transit without conflicting with inbound traffic steering for the southern approach to the TSS. It would also provide a greater margin of safety around the hazards of Duntze Rock and Tatoosh Island.

In the development of these proposed changes to the TSS, we considered the location of the traditional fishing grounds off the entrance to the Strait of Juan de Fuca. Although it was not possible to completely segregate the TSS from the fishing grounds, the recommended changes minimize potential conflicts and improve the existing configuration.

Our recommendations provide routing order and predictability further offshore thereby reducing conflicts between vessels following the TSS and vessels fishing at the entrance to the Strait.

Recommendation: That we implement all actions presented as Issues #4a through 4f.

Issue #5: Should the CVTS agreement be expanded to formally recognize an offshore VTS zone?

Discussion: The United States and Canada administer their respective National Vessel Traffic Management Regulations to the limit of their territorial seas (12 nautical miles). Based on current laws, neither country has the authority to impose a mandatory VTS regime beyond its territorial sea. Although VTS jurisdiction does not extend beyond 12 nautical miles, vessels are asked to voluntarily check in with Tofino Traffic Center once north of latitude 48° N or east of longitude 127° W, or within 50 miles of Vancouver Island. This is known as the CVTS ''Service Area'' and represents the existing radar coverage of Tofino Traffic Center. Once checked in, vessels are provided with traffic advisories and are actively managed. Check-in points are depicted on the navigational charts, and voluntary compliance is in excess of 99%.

Recommendation: Do not formally create a VTS offshore zone. The CVTS will continue to provide traffic management services on a voluntary basis.

Issue #6: Should there be mandatory compliance with the ATBA associated with the Olympic Coast National Marine Sanctuary?

Discussion: The ATBA requests voluntary exclusion of tank vessels or barges carrying oil in bulk or hazardous materials. Vessel track lines have been recorded for potential violations of this voluntary program. For those vessels found within the ATBA and in violation, there has been a high degree of compliance after receiving letters jointly signed by the Manager of the Marine Sanctuary and the local USCG Captain of the Port.

At this time the State/BC Oil Spill Task Force is conducting an Offshore Routing Study. This study will likely recommend coastwise routes that segregate various shipping classes into offshore ''lanes'' depending on their potential risk to the environment. It will build upon the recommendations of the Monterey Bay National Marine Sanctuary (MBNMS) Vessel Management Study and provide consistency along the entire West Coast. The recommended realignment of the TSS at the entrance to the Strait of Juan de Fuca and the minor expansion of the ATBA should be consistent with any recommendations of the Offshore Routing Study.

Recommendation: Do not make compliance with the ATBA mandatory. Good voluntary compliance currently exists. The realignment of the TSS at the entrance to the Strait of Juan de Fuca and the minor expansion of the ATBA discussed previously will make it easier for vessels to voluntarily comply. We should continue to market and promote voluntary compliance and closely coordinate the final recommendations of this Port Access Route Study with the Offshore Routing Study.

Cape Flattery to Race Rocks

Issues #7a through 7c: Should we—

a. Center the TSS exactly on the International Boundary, and standardize the widths of the separation zone and traffic lanes to a consistent 2000 yards;

b. Soften the inbound dogleg off Twin Rivers from 22 degrees to 8 degrees to make it consistent with the International Boundary; and

c. Establish IMO ''Recommended Routes'' north and south of the TSS to formally recognize and accommodate the existing traffic patterns?

Discussion: Commercial fishing activity and patterns in the Strait of Juan de Fuca have changed significantly since the TSS was first designed and implemented. Neither PSVTS nor commercial fishing representatives report significant fishing activity in the separation zone. Therefore, the recommended changes to the TSS should not have an unreasonably adverse impact on the fishing industry.

In its current configuration, two thirds of the TSS is located on the United States side of the International Boundary. The separation zone flares to a maximum width of approximately three miles. This TSS alignment reduces the amount of navigable water available to those vessels choosing to transit outbound or inbound south of the TSS, and places inbound traffic following the lanes in closer proximity to land than vessels transiting in the outbound lanes.

Centering of the TSS on the International Boundary and reducing the width of the separation zone will reduce the potential for powered groundings on the U.S. shoreline by creating a larger buffer between the TSS and shore. It also creates additional space for the existing in-shore traffic that transits south of the TSS.

The Canadian Practice Firing Range (Exercise area WH) is located midway in the Strait, and extends south from the shoreline to the International Boundary. This centering change will have minimal impact on the Canadian ''WH'' firing range, as reported by the Canadian Defense Force.

The inbound 22° dogleg in the TSS off Twin Rivers has been identified as an occasional contributor to confusion during overtaking evolutions. On extremely rare occasions, the VTS has had to remind vessels to execute the turn. Reducing the inbound dogleg in the TSS from 22° to 8° allows the TSS to be centered on the International Boundary. This in turn facilitates overtaking situations, and allows for improved traffic flow in the vicinity of Port Angeles. Centering the TSS on the International Boundary and reducing the dogleg also creates more sea room for a vessel to recover or for the VTS to contact them should they miss the turn on the inbound leg. A complete elimination of the dogleg turn was not feasible because it would have resulted in the TSS being too close to shoal water at certain locations in the Strait.

IMO recognition of two-way ''recommended routes'' north and south of the traffic lanes would formalize existing traffic patterns and provide additional order and predictability. Formally establishing recommended routes would also help to preserve the TSS for fast moving, deep draft traffic.

Analysis of current traffic patterns in the informal traffic zone south of the TSS revealed that meeting traffic routinely passes starboard to starboard. We will encourage vessels within the informal traffic zone to meet starboard to starboard, which we consider safer than the more traditional port to port meeting recommended by the COLREGS. Starboard to starboard meeting in the informal traffic zone is preferred because it results in the vessel closest to the TSS proceeding in the same direction as a deep draft vessel traveling eastbound in the inbound lane of the TSS. This traffic pattern minimizes the potential of a collision between deep draft vessels following the TSS and outbound vessels following the recommended route. We anticipate that vessels using the inshore recommended route would be habitual or repeat users while those choosing to use the TSS would be first time or less familiar users. For the recommended routes south of the TSS, we propose formalizing the current practice of vessels meeting starboard to starboard. To avoid unnecessary confusion and to maintain international consistency, we also propose prescribing starboard to starboard meetings for the recommended routes north of the TSS.

Recommendation: That we implement all actions presented as Issues #7a through 7c.

Port Angeles Precautionary Area—Race Rocks to New Dungeness and North to Discovery Island

Issues #8a through 8e: Should we—

a. Move the Port Angeles pilot station to a point approximately 1.25 miles north and 1.25 miles east of the tip of Ediz Hook;

b. Redefine the boundaries of the precautionary area as follows:

1. North of Port Angeles, define the western boundary of the precautionary area by linking the southern edge of the inbound traffic lane and the tip of Ediz Hook.

2. Define the eastern boundary of the precautionary area by linking the southern edge of the inbound traffic lane and the tip of Dungeness Spit.

3. Further define the eastern boundary of the precautionary area by linking the southern outbound traffic lane and the northern inbound traffic lane.

c. Establish a VTS special area within the inbound traffic lane between Angeles Point and the Port Angeles pilots station where a vessel will be prohibited from overtaking another vessel without VTS approval;

d. Establish precautionary areas for the turns at Discovery Island and the Victoria pilot station; and

e. Create an inshore buffer by decreasing the width of the TSS leading from the Victoria pilots station to the turn south of Discovery Island while maintaining the same southern boundary of the inbound lane? In addition, we would link the TSS off Discovery Island with the new TSS in Haro Strait.

Discussion: Five TSSs converge at the precautionary areas located to the north and east of Port Angeles. Ferries, recreational vessels, piloted deep draft vessels, non-piloted deep draft vessels, tugs and tows, naval vessels, and large and small commercial fishing vessels all interact and compete for space at this convergence point in the traffic scheme. The present traffic configuration was designed primarily to deliver inbound vessels to the pilot stations located at Port Angeles and Victoria. The impact on vessel safety or other waterway users may have been overshadowed. For example, the present configuration does not separate the Port Angeles pilots boarding area from either the through traffic following the TSS or the traffic choosing to follow the informal inshore traffic lanes.

The current TSS routing leading to the Port Angeles pilot station has been identified through casualty histories as a substantial cause for concern. Vessels bound for the Port Angeles pilots station are required by the TSS to steer almost directly on Ediz Hook. Vessels must first execute a 60-degree turn, then slow to varying speeds, which creates different impacts on steerage, to pick up a pilot. At this point a vessel may be particularly vulnerable to currents and seas. If an engineering failure occurred during this evolution, the vessel would be at risk of a drift or powered grounding on Ediz Hook. By moving the pilot station we can minimize the number of sharp turns vessels must make when entering and leaving the precautionary area off Port Angeles. The move also eliminates the requirement for a vessel to steer directly on Ediz Hook while maneuvering to pick up a pilot, and allows through traffic to avoid the pilot boarding area.

On the Canadian side, outbound tugs and barges exit the TSS at Discovery Island and head directly for the inshore routes south of Race Rocks cutting across the inbound and outbound TSS lanes south of Victoria. Outbound fishing vessels exiting Baynes Channel or passing east of Discovery Island attempt to stay north of the TSS but often infringe upon the lanes near Trial Island, Discovery Island, and the pilot station. Creating a buffer zone north of the Victoria TSS allows fishing vessels and other small, slow moving vessels to transit directly between Discovery Island and Race Rocks then inshore north of the TSS.

An issue unrelated to the TSS configuration, is the behavior of unpiloted vessels inbound from sea approaching the Port Angeles precautionary area. On occasion, an inbound vessel does not complete overtaking evolutions before entering the precautionary area. Results of an incomplete evolution include either imprudent speeds, or a vessel attempting to cross ahead of a vessel it has just passed. When this occurs, the VTS often must intervene and issue directions to the vessels. Establishing a VTS special area within the inbound traffic lane increases the predictability of vessel movements within the Port Angeles precautionary area by prohibiting overtaking maneuvers.

Recommendation: That we implement all actions presented as Issues #8a through 8e.

Haro Strait and Boundary Pass

Issues #9a through 9d: Should we—

a. In Haro Strait and Boundary Pass, establish a two-way traffic lane similar to the one presently existing in Rosario Strait;

b. Establish a 2-mile diameter precautionary area centered on Turn Point to manage the merging traffic from several secondary channels in the vicinity of Turn Point;

c. Designate the U.S. waters of this precautionary area as a VTS Special Area as defined in 33 CFR 161.13 where VTS users would not be allowed to meet, cross or overtake without the prior permission of the CVTS; and

d. Through the Joint Coordinating Group of the CVTS, modify the existing Turn Point Tanker Safety Area to adopt the same special area provisions in Canadian waters?

Discussion: Turn Point is one of the more navigationally challenging areas of Haro Strait and Boundary Pass. Transiting vessels must negotiate a blind right-angle turn at varying distances from shore depending on their direction of travel and the presence of strong currents. In addition, numerous secondary channels and passages route traffic into Haro Strait in the vicinity of Turn Point.

Neither designated traffic routes nor formal vessel routing measures are in effect except for the ''Turn Point Tanker Safety Area.'' This CVTS measure requires loaded tankers of 40,000 DWT or greater to make passing arrangements on channel 11 and to ''take every precaution to maintain a safe CPA'' when transiting in the vicinity of Turn Point.

By establishing a formal traffic lane, the provisions of Rule 10 of the COLREGS would apply. Rule 10 directs certain smaller vessels to not impede the passage of a vessel following a traffic lane. Establishment of a formal traffic lane and its inclusion on navigational charts will also increase order and predictability by reminding non-participants where to expect fast moving, deep draft vessels.

A generous precautionary area at Turn Point will provide vessels maximum flexibility to maneuver as they compensate for the strong currents present. The creation of a VTS Special Area centered on Turn Point will also promote safe marine practices by eliminating the meeting of vessels at a sub-optimal location in the traffic scheme. Further, establishing the same provisions in Canadian waters will ensure international uniformity.

Recommendation: That we implement all actions presented as Issues #9a through 9d.

Rosario Strait

Issues #10a and 10b: Should we—

a. Extend the precautionary area ''RB'' southward into the existing traffic lanes which would eliminate that portion of the separation zone that the large vessels are unable to avoid; and

b. Expand the applicability of the existing Rosario/Guemes Channel VTS Special Area regulations contained in 33 CFR 161.55 to include all adjacent waters through which loaded or light tankers have historically transited? These waters would include Bellingham Channel and the navigable channels northeast of Guemes and Sinclair Islands, which connect the refineries at Anacortes and Cherry Point.

Discussion: Deep draft vessels often cannot precisely follow the TSS when approaching Rosario Strait from the south. Strong currents make it impossible for vessels to avoid the separation zone as they negotiate the slight turns in the TSS just south of precautionary area ''RB''. We could not eliminate the small turns in the TSS approaching precautionary area ''RB'' without placing the TSS uncomfortably close to other shoal water. We believe the safety of deep draft transits will be enhanced by eliminating a routing measure with which large ships cannot comply and replacing it with a precautionary area ''where ships must navigate with particular caution.''

The PSVTS Special Area regulations contained in 33 CFR 161.55 are only applicable to certain categories of vessels operating in Rosario Strait and Guemes Channel, and they modify the generic VTS Special Area regulations

contained in 33 CFR 161.13. These Special Area regulations were promulgated in recognition of the size and potential risks associated with tankers transiting Rosario and Guemes Channels en route to the refineries located at Anacortes and March Point. However, loaded and light tankers will also occasionally transit Bellingham Channel and the waters northeast of Guemes/Sinclair Island as an alternate route to the refineries or to reach the anchorage at Vendovi Island.

Currently, the VTS Special Area regulations do not apply to these secondary navigational channels which are arguably equally or more navigationally challenging than Guemes and Rosario Channels. These recommendations would further enhance safety by expanding the Rosario/Guemes Special Area regulations to adjacent waters that have equal or greater risk and are frequented by both loaded and light tankers.

Recommendation: That we implement all actions presented as Issues #10a and 10b.

Strait of Georgia

Issues #11a and 11b: Should we—

a. Modify slightly the existing TSS and establish a set of traffic lanes to align and connect the two TSSs; and

b. Establish precautionary areas east of East Point at the junction of the new Boundary Pass traffic lane and Strait of Georgia TSS, and west of Delta Port and the Tsawwassen Ferry Terminal?

Discussion: There has been an increase in traffic from Delta Port and the Tsawwassen Ferry Terminal which poses a risk of collision as departing vessels enter the TSS and build to sea speed. In addition, there is no routing measure connecting the TSS that terminates off Patos Island with the TSS that terminates off Saturna Island. Further, these two TSSs are not aligned. Traffic exiting the Strait of Georgia bound for Rosario Strait follows the TSS to its termination before angling back to the north to enter the TSS at Patos Island. This vessel routing crowds and creates a possible conflict with traffic southbound for Boundary Pass. Finally, there is no precautionary area in the vicinity of East Point, where traffic merges from several directions. By providing a contiguous TSS that connects the new Boundary Pass traffic lane with the existing or modified TSS in the Strait of Georgia, and establishing a contiguous TSS connecting the old Patos Island TSS and the Georgia Strait TSS, traffic bound for Rosario Strait could follow the TSS without impeding traffic southbound for Boundary Pass.

A new precautionary area southwest of Delta Port will accommodate vessels departing Delta Port and the Tsawwassen Ferry Terminal as they get up to maneuvering speed before and while entering the TSS.

A new precautionary area around East Point will provide logical connection to three converging traffic lanes. It will also highlight the need for potential crossing traffic in this area to exercise caution and will provide tankers departing Cherry Point bound for Haro Strait with a predictable and safe location to enter the traffic scheme.

Recommendation: That we implement all actions presented as Issues #11a and 11b.

Future Actions

We appreciate the comments we received concerning the PARS. Upon receiving your comments concerning this notice of preliminary study results, we will analyze them, and publish a notice of study results in the **Federal Register**. Any recommended changes to the Code of Federal Regulations will require a notice of proposed rulemaking (NPRM) published in the **Federal Register**. In addition, any changes to the vessel routing system, i.e., TSS, ATBA, and precautionary areas, will require submission to and approval of the International Maritime Organization.

Dated: February 16, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–4196 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN118–1b; FRL–6538–4]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to particulate matter (PM) emissions regulations for Indianapolis Power and Light Company (IPL) in Marion County, Indiana, which were submitted by the Indiana Department of Environmental Management (IDEM) on November 22, 1999, as amendments to its State Implementation Plan (SIP). The revisions apply to 3 IPL generating stations located in Indianapolis: Perry K, Perry W (demolished), and E. W. Stout. The revisions include relaxation of some PM limits, tightening of other limits, and the elimination of limits for several boilers which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and correction of a typographical error in one limit. This SIP revision results in an overall decrease in allowed PM emissions of 52.54 tons per year. An air quality modeling analysis conducted by the IDEM shows that the maximum daily and annual impacts of this SIP revision are well below established significance levels. Therefore, this SIP revision will not have an adverse effect on PM air quality.

DATES: EPA must receive written comments on this proposed rule by March 24, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. What action is EPA taking today?
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I. What action is EPA taking today?

We are proposing to approve PM emissions regulations for IPL in Marion County, Indiana, which were submitted by the IDEM on November 22, 1999, as amendments to its SIP. The revisions apply to 3 IPL generating stations located in Indianapolis: Perry K, Perry W (demolished), and E.W. Stout. The revisions include relaxation of some PM limits, tightening of other limits, and the elimination of limits for several boilers which are no longer operating. The revisions also include the combination of annual emissions limits for several

boilers, and correction of a typographical error in one limit.

II. Where can I find more information about this proposal and the corresponding direct final rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 4, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–4046 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN–227–1–200001b; FRL–6539–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Tennessee; Approval of 111(d) Plan for Municipal Solid Waste Landfills in Knox County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan for Knox County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (DEC) on July 29, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Solid Waste Landfills. The Plan was submitted by the Tennessee DEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of this **Federal Register**, the EPA is approving the Chattanooga-Hamilton County Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 24, 2000.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

- Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.
- Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.
- Knox County Department of Air Quality Management, City/County Building, Room 339, 400 Main Street, Knoxville, Tennessee, 37902–2405. 423/215–2488.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: February 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–4042 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN–219–2–200008b; FRL–6539–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Tennessee; Approval of 111(d) Plan for Municipal Solid Waste Landfills in Chattanooga-Hamilton County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan for Chattanooga-Hamilton County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (DEC) on April 26, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Solid Waste Landfills. The Plan was submitted by the Tennessee DEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of this **Federal Register**, the EPA is approving the Chattanooga-Hamilton County Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 24, 2000.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

- Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.
- Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.
- Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee, 37407–2495, 423/867–4321.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: February 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–4044 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 156

[OPP–36190A; FRL–6491–1]

RIN 2070–AC46

Equivalency of Pesticides Metolachlor and S-metolachlor With Respect to Ground Water Contamination; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comment.

SUMMARY: The Agency is providing an opportunity for the public and affected parties to submit comments on additional information about a chemical contained in the proposed Ground Water and Pesticides Management Plan (PMP) Rule (61 FR 33260, June 26, 1996). In the proposed PMP rule, the Agency proposed, as a condition of continued use, that States and Tribes prepare chemical-specific management plans for four herbicides that have been shown to persist in the environment and leach to ground water, creating a potential unreasonable adverse effect on human health and the environment. One of the four pesticides in the proposed rule is metolachlor. EPA is seeking additional comment on the specific information that is being made available and which is described in this document.

DATES: Written comments, identified by the docket number OPP–36190A, must be received on or before March 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36190A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Arthur-Jean B. Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 703–305–5239, fax number: 703–308–3259, e-mail address: williams.arty@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice of data availability and request for comment is directed to the public in general. It may, however, be of particular interest to you if you register, distribute, apply, or manage the application of a pesticide that contains optically active isomeric active ingredients and, in particular, a product enriched for one (usually more pesticidally active) optical isomer. In addition, persons commenting on the Ground Water and Pesticide Management Plan proposal (61 FR 33260, June 26, 1996) (FRL–4981–9) may be particularly interested in some or all of these data. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–36190A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36190A in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Electronically. You may submit your comments electronically by E-mail to: ''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6/7/8 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–36190A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential

will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

On June 26, 1996, EPA proposed a rule (61 FR 33260) called the Ground Water Pesticide Management Plan Rule (''PMP'' or the ''Rule'') to protect ground water from the legal, labeled use of certain pesticides. When final, this Rule will restrict the legal sale and use of four pesticides known to leach to ground water at concentrations that may be harmful to human health and the environment. The pesticides are alachlor, atrazine, metolachlor, and simazine and are classified as either ''probable'' or ''possible'' human carcinogens. In making this registration decision, EPA has determined that use of these pesticides may cause unreasonable adverse effects on human health and the environment in the absence of effective, site-specific management measures. These measures are provided by a Ground Water Pesticide Management Plan developed by States and Tribes and approved by EPA.

III. Data Available for Comments

A. What Additional Data is EPA Making Available for Comment?

The Agency is seeking comment on data provided to EPA to support the registration of a pesticide formulation enriched with the *S*-optical isomer of metolachlor. The isomer is named CGA 77102 by the registrant, and has also been referred to as chiral metolachlor, alpha-metolachlor, and *S*-metolachlor. The enriched formulation also contains *R*-metolachlor (*R*-optical isomer). Specifically, this notice invites comments on data pertaining to the products containing metolachlor, *S*-metolachlor, and *R*-metolachlor. This notice solicits comments on environmental fate data which could be relevant to the question of whether the Agency should consider acetamide, 2-chloro--*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-,(*S*)-(common name: *S*-metolachlor), and acetamide, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2- methoxy-1-methylethyl)-,(*R*)-(common name: *R*-metolachlor) to be metolachlor (chemical name: acetamide, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-) for purposes of the proposed Ground Water and Pesticides Management Plan (PMP) rule. While previous products of metolachlor contain equal parts (ratio of 50:50) of the *S*-metolachlor and *R*- metolachlor (referred to as a racemic mixture of optical isomers or R and S enantiomers), more recent formulations contain the *S*-metolachlor and *R*-metolachlor in a ratio of approximately 88:11. The following documents have been placed in the official Docket of the proposed rule (OPP–36190A) and are available for your review and comment as described in Unit I.B. Please note, the name alpha-metolachlor was used extensively in the documents for the formulation enriched with *S*-metolachlor and was a common name (now outdated) used by the registrant to refer to the same chemical as the *S*-optical isomer of metolachlor.

1. Ciba-Geigy letter dated 1/15/96 to EPA Document Processing Desk, Attn: Joanne Miler. Application for registration under the Agency reduced risk initiative - PR notice 93–9.
2. Data summary submitted by Ciba-Geigy Corporation, dated 1/11/96 and 1/12/96 to support the registration of CGA 77102. The reports details the magnitude of the residues in corn and soybeans.
3. Replacement of metolachlor technical with *S*-metolachlor -- review of bridging data, EPA memo dated November 15,1996, from Linda L. Kutney, Health Effects Division, to Rich Griffin, Registration Division. Reviews bridging data and provides conclusions and recommendations.
4. Ciba-Geigy notice dated 12/19/96 filing for use of existing tolerances for metolachlor and addressing the Food Quality Protection Act. Cover letter to Joanne Miller, EPA Registration Division, from Karen Stumpf, Ciba-Geigy Senior Regulatory Affairs.
5. EPA memorandum D223753, D223769, D233184 dated 4/11/97 from Dan Reider, EPA Environmental Fate and Effects Division, to Joanne Miller, EPA Special Review and Reregistration Division. Review of studies for CGA 77102, a metolachlor isomer.
6. Environmental fate data from Ciba-Geigy in support of registration of CGA 77102 (DP Barcode D232589, chemical code 10800). This package reviews the bridging environmental fate data (soil photolysis, mobility, aerobic soil metabolism, unaged leaching, adsorption/desorption, and aged soil column leaching) submitted in support of registration.
7. EPA RfD/Peer Review Report of *S*-metolachlor dated 7/16/97, cover memo from George Z. Ghali PhD, EPA Health Effects Division, to Joanne Miller, EPA Registration Division. This package reviews toxicological data in support of *S*-metolachlor, including data evaluations records (DERS) for developmental toxicity studies in rats and rabbits, subchronic toxicity studies in rats and dogs, and a battery of mutagenicity studies.

B. Why is EPA Seeking Comment on this Additional Data?

EPA believes these data show that the fate of metolachlor (the 50:50 racemic mixture) in the environment is basically the same as the fate of CGA–77102 (the enriched *S*-metolachor mixture containing *R*-metolachor with respect to its impact on the environment. This includes the major routes of degradation and the propensity to leach to and contaminate ground water, and is the reason bridging data were used for registering the product enriched with *S*-metolachlor, containing less *R*-metolachlor. Also, limited toxicological investigation was submitted on behalf of *S*-metolachlor in support of the registration as requested by the registrant based on the fact that S-metolachor has already been subject to extensive toxicological testing during development of metolachor. EPA is seeking comment on these points because metolachlor and *S*-metolachor contain the same chemicals and only differ in the proportion of *R*-metolachor and *S*-metolachor in their mixtures, with the CGA 77102 mixture having a

higher percentage of more biologically active *S*-metolachor.

These data also raise the question of whether a pesticide that would be subject to the Proposed Ground Water and Pesticide Management Plan Rule (including metolachlor) that is reformulated with a different proportion of optical isomers should also be subject to the Proposed Rule. If the enriched mixture containing the *R*- and *S*-enantiomers is not subject to the Proposed Rule, then the objective of the Proposed Rule, to prevent ground water contamination by the metolachor active ingredient, could fail to be achieved. Also, monitoring could not determine the effectiveness of the Proposed Rule to prevent contamination of metolachlor since water quality testing by the States or Tribes could not distinguish between metolachlor with a 50:50 mixture of optical isomers or an enriched mixture of these isomers.

Implicit in the decision to consider *S*-metolachlor as equivalent to metolachlor for purposes of the PMP Rule is the acceptance of the Health Advisory (HA) for metolachlor as the reference point for *S*-metolachlor. This is consistent with the bridging of metolachlor toxicity studies to support the registration of *S*-metolachlor. If, in the future, EPA's Office of Drinking Water and Ground Water recalculates an HA for *S*-metolachlor, or establishes a Maximum Contaminant Level (MCL) for the chemical, the new value would become the new reference point for metolachlor.

IV. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rule, it merely announces the availability of and requests comments on additional data and/or information related to, among other things, a proposed rule that previously published in the **Federal Register** of June 26, 1996, 61 FR 33260. For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit VIII of that document (61 FR 33293).

List of Subjects

40 CFR Part 152

Environmental protection, Administrative practice and procedure, Pesticides and pest, Reporting and recordkeeping requirements.

40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: February 16, 2000.

Susan H. Wayland,

Deputy Assistant Administrator Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–4243 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC90

Disaster Assistance; Insurance Requirements for the Public Assistance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: As a means to achieve a nationally consistent level of responsibility among public and certain private non-profit entities for natural disaster risks, we (FEMA) are considering making a minimum amount of building insurance coverage a criterion for eligibility for Public Assistance. In order to encourage the purchase of such insurance, we are considering whether and how to make uninsured buildings ineligible for Public Assistance. We have sought out the advice of numerous insurance experts and program stakeholders on this, but believe we will benefit by sharing our thinking on these issues to the widest audience possible and seeking their views and comments before we publish a proposed rule. We also have various specific questions for your consideration.

DATES: We invite written comments on this and will accept them until April 10, 2000.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Curtis Carleton, Chief, Community Services Branch, Federal Emergency Management Agency, 500 C Street SW., room 713, Washington, DC 20472, 202–646–4535, (facsimile) 202–646–3147; or (email) *Curtis.Carleton@fema.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), authorizes the President to pay at least 75 percent of the costs to repair infrastructure damaged by a presidentially declared major disaster. The Public Assistance Program provides grants to applicants—including State and local governments, Native Americans or authorized tribal organizations, Alaskan Native villages and organizations, as well as certain eligible private non-profit organizations—for emergency protective measures, for debris removal, and for disaster-damaged infrastructure.

Our objective with this advance notice of proposed rulemaking (ANPR) is to focus on natural disaster-damaged infrastructure, and more specifically, building damage. The Stafford Act has directives and requirements on insurance. Our information up to this point is that, with a few exceptions, insurance is available for buildings. Therefore, we have interpreted that these directives and requirements can be applied to that category of public infrastructure.

It is clear from the Stafford Act and from its supporting and background materials that the Congress views the purchase of insurance as an effective risk management device.

- The Stafford Act encourages obtaining insurance in its preamble, § 101.
- Further, it says in § 311 that an applicant must agree to obtain and maintain insurance as a condition of receiving a Public Assistance grant.
- Insurance is defined as a benefit under § 312, and as such, a Public Assistance grant may not be awarded so as to duplicate it.

Our current regulations, found in 44 CFR, Subchapter D, Part 206, Subpart I, translate the insurance purchase requirement to mean that the amount of insurance to be purchased must be at least up to the amount of eligible damage under the Public Assistance program. If the eligible damage is far less than the replacement value of the building, and if the corresponding minimal level of insurance coverage can actually be purchased, this may result in a vastly underinsured building. The current regulations do not speak to the type of insurance required—actual cash value or replacement cost value—and they do not address deductibles. This is important both from the standpoint of the insurance purchase requirement and the amount of the Public Assistance grant awarded. Most importantly, the current regulations do not have any mechanism to encourage insurance on public buildings that have not yet received disaster assistance. The absence of meaningful encouragement

for the purchase of property insurance on buildings is a deeply important issue to the program. There are critical fairness and fiscal issues involved with this, as we will discuss below. Our interest with this Notice centers on this issue.

II. Statement of the Problem

The preamble to the Stafford Act directs us to encourage ''individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance.'' The Public Assistance program fails to do this. The program has no mechanism to encourage public entities to purchase property insurance *before* a disaster strikes.

(A) *Current disincentives to insurance.* (i) Building repair costs. In fact, by paying for building repair costs whether or not the building had property insurance, we currently provide a *disincentive* to carry insurance. Many potential Public Assistance applicants have told us, in so many words: Why carry insurance on our buildings when we know that FEMA will be there to pick up the costs when the disaster hits?

(ii) High deductibles. A corollary issue here deals with an applicant who may have insurance, but has opted to reduce the premium by selecting a very high deductible. Because our current policy is to reimburse the applicant for that portion of the loss not covered by insurance, including any deductible—*whatever the amount*—the program tends to encourage high levels of retained risk, even for those insured. The program has clear disincentives to carry low or moderate deductibles.

(B) *Fairness.* Once a presidential disaster has been declared, the program pays the federal cost share (usually 75 percent) for all eligible building repair costs to the extent that insurance does not. Is it fair that the applicant who has paid premiums throughout the years and the applicant who has no insurance and saved these expenses over the years are treated equally? Many risk managers and other stakeholders have raised this fairness issue with us.

(C) *Other issues.* In addition to this issue, the current program regulations dealing with insurance fail to address other issues.

(i) We do not say what we mean by the term ''insurance.'' How we define insurance is important because it governs the circumstances under which we will reimburse an applicant where there may be something similar to insurance in place, and it governs what is acceptable for the purpose of meeting the insurance purchase requirement.

(ii) Our current regulations do not say whether we will provide assistance for insured losses that fall within the deductible limits of a policy, and if so, up to what limits, if any.

(iii) We do not say what type of insurance—replacement cost value or actual cost value—is needed to satisfy the insurance purchase requirement.

(iv) We do not say whether a local government or private non-profit organization could qualify as a self-insurer for the purposes of meeting the insurance purchase requirement, and

(v) We do not provide any policies or guidance regarding the State insurance commissioners' determination under the Stafford Act that insurance is not reasonably available. Section 311(a)(2) allows an applicant not to obtain and maintain insurance if the State insurance commissioner determines that it is not reasonably available.

III. Standards

We have in mind several principles we would like to adhere to for the eventual insurance proposal. Please frame your views with these standards in mind.

(A) *Affordability.* Any new policy should not require entities to substantially re-order their spending priorities. We are considering setting not only maximum premium levels, but also maximum coverage amounts.

(B) *Availability.* Any new policy should not deny assistance to entities that cannot obtain the required product. We are considering establishing minimum coverage amounts that are offered by private insurers, obtained by being self-insured, or achieved by using a combination of both.

(C) *Private Sector.* We believe that a federally directed program of insurance is neither desired nor practical. We believe that the private sector has in place the appropriate resources and mechanisms to provide property insurance to the public sector.

(D) *Fairness.* Similarly situated entities should not feel the program discriminates against them for wise investment strategies.

IV. Possible Options

Over the last several years we have considered various approaches to dealing with these problems. This activity started with internal work groups, and evolved into a collaborative effort with insurance experts and many stakeholder groups. There have been many variations, but the basic options considered may be condensed into three approaches:

Option 1. Make the repair or replacement of public buildings ineligible for federal disaster assistance. The underlying concept is that insurance for buildings is readily available, and that, therefore, supplemental federal assistance might not be necessary for this category of public facility. This approach would eliminate the disincentive to insure and to reduce and prevent future building damage; it would eliminate the fairness issue; and it would eliminate other deficiencies with the current program regulations.

Option 2. Maintain the current eligibility of public buildings for Public Assistance funding whether they are insured or not. At the same time, eliminate funding for deductibles, define insurance, and address other technical issues.

Option 3. Make the repair of public buildings eligible for federal disaster assistance only if insured at the time of the disaster. Also, define limits on program payments for deductibles, define insurance, and address other policy issues that the current program regulations are silent on. This approach would speak to both the fairness and disincentive issues, and it would deal with troublesome ambiguities.

V. Tentative Conclusions

Option 1

We have tentatively concluded that the approach of eliminating reimbursements for building damage would be unreasonable. Even if they have insurance, many buildings will suffer catastrophic losses that will far exceed the insurance settlements. There is a legitimate need for the federal government to supplement what the insurance industry can provide for building repairs in severe natural disasters. In addition, this approach runs counter to the partnership and shared responsibility approach upon which the Nation's emergency management system is based. We tentatively rejected option 1.

Option 2

We also tentatively rejected option 2 because it would not encourage applicants to insure their buildings. By eliminating funding for deductibles, and in the absence of any pre-disaster conditioning of Public Assistance on insurance coverage, we would cause the applicant with insurance to receive less in repair dollars than the applicant with no insurance. The applicant with insurance would receive Public Assistance funding for the amount of the damage less the deductible and

insurance recovery. The applicant without insurance would receive funding for the entire amount of the damage. In both cases, the federal funds would be cost shared. Even with various policy improvements and clarifications, this option clearly would not begin to fix the basic problems of fairness and the disincentives for buying insurance.

Option 3.

In our view, option 3 best promises to meet the intent and specific provisions of the Stafford Act in a fair and reasonable way. We are seeking your thoughts as to how we can best deal with the issues identified, whether they be in the context of one of these options, or in one of your own. But, since we have concentrated our attention in recent months on option 3, we are particularly interested in your views on this approach. We are, therefore, providing below some detail on this concept of redesigning our Public Assistance insurance considerations.

VI. Option 3. The Insurance Option

Under the current program regulations, the purchase of insurance only affects program eligibility for federal disaster assistance of a facility damaged by a presidentially declared disaster if that very same facility was previously damaged by and received federal assistance after a prior presidentially declared disaster. The current regulations require a public building to have insurance as a condition of receiving assistance under Stafford Act §§ 406 and 422 but this insurance can be purchased after the disaster in order to cover the ''next'' damaging event. Our purpose is to add a strong incentive for entities to purchase insurance before the damaging event. The change would apply only to buildings, since insurance for all perils is available for this category of public facilities. And in order to provide adequate time for public risk managers to purchase the needed insurance, the change would not be effective until 36 months after the publication date of the final rule on this issue.

(A) *Adequate Insurance.* (i) The key feature of this concept would be to stipulate that the eligibility of buildings for assistance under §§ 406 and 422 in the future would be contingent on their being covered by adequate insurance policies. One possibility we came up with for defining ''adequate insurance'' is the following, described separately for four categories of insurance:

TABLE 1.—INSURANCE AMOUNTS

Categories of insurance	Individual building by building policy	Blanket policy
ALL-RISK	Minimum of 80% Replacement Cost Value (RCV).	Minimum of 80% RCV, or 110% of the total building value at the applicant's highest-valued single location.
EARTHQUAKE	35% of total building value of $1M or less; 25% of the next $9M of building value; 20% of the building value over $10M, with a maximum coverage limit of $125 M.	35% of the total insurable building values of $1M or less; 10% of the next $9M building value; 5% of the building value over $10M, with a maximum coverage limit of $125M.
FLOOD	Maximum offered by NFIP per building.	Total limit equal to or greater than the combined total limits obtained under separate NFIP policies.
WIND	Minimum of 80% of its insurable value up to $125M.	Not less than 80% of the total insurable values at the applicant's highest-valued single location up to $125M.

(ii) In advancing this idea, it would be our intention that no applicant would be burdened with exorbitant insurance premiums. Therefore, we would qualify this schedule of insurance amounts with the proviso that premiums, expressed as a percentage of building replacement cost value, would be capped on that basis. The cap we are considering is $0.30 per $100. In order to meet the condition of having adequate insurance, the applicant would have at minimum, coverage to this cap. We developed this level by consulting with insurance experts in various areas of the country.

(iii) Note that we do not attempt to specify which types of insurance are necessary. The applicant is in the best position to determine the perils for which it would need to purchase insurance. If the applicant did not have the type of insurance that covered the disaster damage, its damaged building would not be eligible for federal disaster assistance.

(B) *Deductibles.* (i) Deductibles play an important role in the cost and settlement value of insurance policies. The Public Assistance Program needs to make clear its position on eligible costs for insured buildings where deductibles are involved—yet current program regulations do not address. While there are no formal policies addressing eligible costs for insured buildings, the practice throughout the FEMA regions has been to treat deductible amounts in insurance policies as if there were no insurance policy at all—that is, to ''fund'' the deductibles. This has the effect of promoting higher deductibles. Our intent in considering a maximum level on eligible deductible costs for insured buildings is to reverse this unintended consequence.

(ii) Under option 3, the maximum deductible amounts eligible for Public Assistance funding would vary by the type of insurance. Based on this concept, the table below shows the numbers we are considering:

TABLE 2.—INSURANCE DEDUCTIBLES

Categories of insurance	Individual building by building policy	Blanket policy
ALL-RISK	0.1% of the building's insurable value with a maximum of $100,000 per occurrence.	0.1% of the building's insurable value with a maximum of $100,000 per occurrence for all buildings involved.
EARTHQUAKE	Maximum of 7.5% of the insurable value of the building.	Maximum of 7.5% of the insurable value of the building(s).
FLOOD	Maximum of $1,000.	2% of the total insurable values of the building(s) involved with a maximum of $25,000.

TABLE 2.—INSURANCE DEDUCTIBLES—Continued

Categories of insurance	Individual building by building policy	Blanket policy
WIND	Maximum 5% of the insurable value of the building with a maximum value of $100,000 per occurrence.	Maximum 5% of the total insurable value of the building(s) involved with a maximum value of $100,000 per occurrence for all buildings involved.

(iii) These proposed maximum eligible amounts resulted from our efforts to balance cost considerations with a minimal standard of sound insurance coverage, and were developed in consultation with outside insurance experts. We selected values that reflect common insurance industry practices. We would like to learn your thoughts on the reasonableness of these percentages and amounts.

(C) *Role of the State Insurance Commissioner.* (i) We would offer new language to address this section. Section 311(a)(2) states that ''* * * the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State Insurance Commissioner responsible for regulation of such insurance.''

(ii) The current program regulations provide no guidance or criteria on how the State insurance commissioner should undertake this role. Under §§ 206.252 and 206.253, the regulations simply state that ''* * * the Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.'' The absence of any definition of the word ''reasonable'' and the absence of any guidance regarding the State insurance commissioner's role have led to confusion about the intent of this provision. This deficiency could seriously diminish the effectiveness of the Stafford Act's fundamental goal of encouraging applicants to provide for their own financial protection against future disasters. We need to provide specific guidance to correct this deficiency.

(iii) Under option 3 we would establish boundaries where the cost of insurance is the factor under consideration. In order to effect some degree of uniformity throughout the country with regard to the certifications, and in order to ensure a basic level of compliance with the intent of the Stafford Act that encourages ''* * * States and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance * * *'', we would suggest the following:

(A) The State insurance commissioner would grant a certification for a specific peril if commercial insurance is not available from licensed insurance carriers—or surplus lines carriers, or

(B) The State insurance commissioner could grant the certification based on cost.

(iv) In this case, the applicant could request a certification due to financial hardship. Financial hardship would be defined as the cost of combined annual property insurance premiums exceeding 0.3% of the insurable value of a building, or if a blanket policy, 0.3% of the total insurable values (See VI(A)(ii)). To approve such a request, the State insurance commissioner could grant a certification limiting the amount of insurance needed but not relieving the applicant from purchasing insurance. At a minimum, the applicant would have to purchase insurance with a premium cost up to the 0.3%. The applicant could elect to purchase a policy having a lower replacement cost percentage, a higher deductible, or both.

(VII) Questions

We are interested in your ideas as to how the Public Assistance program could be improved with regard to its insurance requirements and considerations. Please do not limit your comments to our option 3; we are interested in any and all ideas that you might have. Additionally, we do have specific questions about the approach that we outlined above.

(A) *Economic impacts and impacts on small entities.* As required by Executive Order 12866, we are currently looking at the economic impacts of this approach. We welcome any information that will help us in our analysis. Many of the following questions focus specifically on the costs; however any ideas or information about its benefits would be helpful as well. In addition, the Regulatory Flexibility Act deals with impacts on small entities. As defined in the Regulatory Flexibility Act, small governmental jurisdictions are ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Likewise, the Act defines a small organization as ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Therefore, we pose several questions in order to gain a better understanding of the impacts this approach would have on small private non-profit organizations and small local governments.

(i) Is commercial property insurance available to insure public buildings in your area?

(ii) Is commercial property insurance available at what you would consider to be an affordable price in your area?

(iii) If you are a potential applicant with buildings, can you tell us whether and for what you are insured, as well as, how our proposal, if adopted, would affect those insurance premiums? If you are a small private non-profit organization or small local government, please identify that fact, as we will be doing a separate analysis of the effects on small entities. If there would be an increase involved, it would be most helpful if you would tell us what that increase would be, expressed as a percentage above your current premium.

(iv) Would it be appropriate to allow qualifying local governments and private non-profit organizations to be considered as self-insurers? If so, what criteria should we use to qualify them?

(v) We suggest $0.30 per $100 both as a guideline for State insurance commissioners in determining the reasonableness of insurance premiums, and as a threshold above which insurance would not need to be purchased to satisfy our condition for Public Assistance eligibility. Do you consider this reasonable? If not, what level would you suggest, and for what reasons?

(vi) What are your thoughts as to the reasonableness of the schedule of insurance amounts and deductibles shown in option 3? Have we set the maximum amount of insurance needed too low?

(vii) If you have information on building insurance coverage for potential Public Assistance applicants, would you please tell us, either for your type of organization or for your area, what percentage of buildings you believe is currently covered.

(viii) If you are a small private non-profit organization or small local government, can you tell us more about

your current risk analysis practices and insurance policies. We appreciate your interest in this issue, and will look forward to receiving your comments and answers.

(B) *Executive Order 13132, Federalism.* In keeping with the principles embodied in this Executive Order, signed on August 4, 1999, FEMA has consulted with State and local officials as well as private non-profit organizations that might be affected by the approach suggested, and plans to convene additional meetings and discussions. If you have any questions or comments about our plans for these additional meetings and discussions we would welcome receiving them.

Dated: February 17, 2000.

James L. Witt,

Director.

[FR Doc. 00–4246 Filed 2–22–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–255, MM Docket No. 00–22, RM–9795]

Radio Broadcasting Services; Charlotte, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kay-Zam Radio Company proposing the allotment of Channel 272A at Charlotte, Texas, as that community's first local FM service. The coordinates for Channel 272A at Charlotte are 28–46–00 and 98–42–30. There is a site restriction 10.7 kilometers (6.7 miles) south of the community. Mexican concurrence will be requested for the allotment of Channel 272A at Charlotte.

DATES: Comments must be filed on or before April 3, 2000, and reply comments on or before April 18, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, D. C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–22, adopted February 2, 2000, and released February 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–4173 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–256; MM Docket No. 99–209; RM–9628]

Radio Broadcasting Services; Buras, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 279C2 to Buras, Louisiana, as that locality's first commercial FM transmission service. Petitioner failed to establish the availability of a suitable location for tower construction as the required site restriction located 6 kilometers south of the community at coordinates 29–18–15 NL and 89–32–00 WL to accommodate Channel 279C2 at Buras is in marshland. See 64 FR 31172, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–209, adopted February 2, 2000, and released February 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–4172 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–263; MM Docket No. 99–174; RM–9577]

Radio Broadcasting Services; Hanamaulu, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 266C1 to Hanamaulu, Hawaii, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 30289, June 7, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 99–174, adopted February 2, 2000, and released February 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–4170 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 36
Wednesday, February 23, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Rental and Cooperative Housing Loan Policies, Procedures, and Authorizations.

DATES: Comments on this notice must be received by April 24, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracee L. Lilly, Senior Loan Specialist, RHS, U.S. Department of Agriculture, Stop 0781, Washington, D.C. 20250, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Title: Rural Rental and Cooperative Housing Loan Policies, Procedures, and Authorizations.

OMB Number: 0575–0047.

Expiration Date of Approval: April 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, is authorized to make loans to finance rural rental housing (RRH) and rural cooperative housing (RCH) complexes and related facilities under Sections 515 and 521 of Title V of the Housing Act of 1949, as amended. The RRH and RCH programs provide affordable rental and cooperative housing for elderly or disabled persons and families, and other persons and families of low or moderate income in rural areas.

RHS is responsible for ensuring that these federally funded loans are made to eligible applicants for authorized purposes. The information collected is necessary to determine the eligibility of the applicant and the feasibility of the proposed housing. If not collected, the Agency would be providing unauthorized federal assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Individuals, trusts, associations, partnerships, limited partnerships, State or local public agencies, consumer cooperatives, and profit or nonprofit corporations.

Estimated Number of Respondents: 425.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 28,246.

Copies of this information collection can be obtained from Brenda Frost, Regulations and Paperwork Management Branch, at (202) 692–0037.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brenda Frost, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 16, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–4178 Filed 2–22–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Census Bureau

National Employers Survey—(NES 2000)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Hartz, U. S. Bureau of the Census, Room 2535–3—EPCD, Washington, DC 20233–6100; (301–457–2633).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau conducted three earlier National Employers Surveys (1994, 1995 and 1997) for the National Center on the Educational Quality of the Workforce (EQW), a nonprofit research group. This survey will be sponsored by the U.S. Department of Education and the National School-to-Work Office. These groups focus on discovering relationships among employment, hiring, training, education, and business success. This information collection seeks to build upon the results of the previous surveys.

This information collection goes beyond the previous National Employers Surveys in that it seeks to explore employees' histories and to identify employees' perceptions regarding employer-provided training and job-related educational requirements. The collection will relate these employees' responses to similar information collected from employers. The purpose is to identify those areas where employee and employer views are similar and where they are different. This information then will be used to suggest areas where additional emphasis regarding employer job requirements are needed to enable potential employees to qualify for employment.

This new survey will incorporate a telephone survey of employers that responded to the 1997 National Employers survey (NES–3) and a mail questionnaire to be sent to approximately 15,000 employees of a sample of the surveyed companies. During the telephone survey, employers will be asked to volunteer to participate in the employee survey. Companies which volunteer will be sent a package of 30 questionnaires along with instructions on how to distribute these questionnaires to a sample of their employees. The employees will fill out the questionnaires and send them back to the Census Bureau in postage paid envelopes provided. The questionnaire will include about 74 questions that solicit employees' views regarding employment qualifications and training opportunities available to them that relate to their employment. These survey questions are constructed to eliminate the need for respondents to review any records relating to the subject of this collection. We expect that each respondent will spend about 20 minutes completing the questionnaire.

II. Method of Collection

The Census Bureau will conduct the NES 2000 using both a telephone survey and a mail questionnaire. The telephone survey will cover about 3,000 employers that provided information for the NES–3 in 1997. The telephone interview will last less than 30 minutes. During the telephone interview, the employer will be asked to participate in the employee survey. Although we expect more than 500 employers to volunteer for the employee survey, we will limit participation to 500. We will select employers so that we get a representative sample. Employers which volunteer to participate and are selected, will be sent a package of 30 questionnaires along with instructions on how to distribute these questionnaires to a sample of their employees. The employees will fill out the questionnaires and send them back to the Census Bureau in postage paid envelopes provided. The employee questionnaire will be distributed to approximately 15,000 employees. The questionnaire will consist of approximately 74 questions. Most questions will be constructed using a ''check-box'' format. The check boxes primarily will be questions requiring a ''yes/no'' or ''on a range of 1 to 5'' response.

Employees completing the questionnaires will send them directly to the Census Bureau, using pre-addressed, postage-paid return envelopes. Employers will not be allowed access to the questionnaires completed by the employees or the information reported on the questionnaires. Confidentiality is guaranteed by Title 13, United States Code. After the Census Bureau performs data keying and consistency editing, the data set will be provided to sworn Census agents representing the survey sponsors.

High participation rates for both the telephone survey of employers and the employee survey are crucial for statistically reliable data in the NES 2000. We have limited participation to 500 employers in order to keep the respondent burden and the costs of the survey, as low as possible. However, we expect that the responses from the employees of the 500 participating companies will be sufficient to provide useful and representative information. The Census Bureau has discussed survey participation with selected respondents from the NES–3. Nearly all of the business establishments we contacted stated that they would strongly consider participating in the survey. The businesses indicated that their decision to participate in a survey was primarily based on their perception of the usefulness of the requested information. The businesses are very interested in the issues of the survey. One business respondent said, ''After all, these are our concerns, too.'' Also, more 1997 respondents (employers) than in the previous two NES surveys told the interviewers that they wanted the results of the survey. Based on these factors (and especially the employer concerns about these workplace issues), we expect a sufficiently high rate of the employers from the NES–3 to participate in the NES 2000.

We plan to rely on the employers to select the sample of their employees and distribute the questionnaires to them. We will be talking to a few more respondents to help design an effective and comfortable operational design for selecting employees and distributing the materials. The Census Bureau is confident in the ability of the volunteering businesses to draw a reliable, random sample of employees, based on payroll records containing the Social Security number (which we may instruct them to use as the selection criterion).

The survey sponsors considered two designs for this survey. One was to measure only newly hired employees and address a set of issues that relate to that segment of the work force. Another was to survey employees across the board. When we asked about limiting the selection to ''new hires,'' several of the businesses thought that would pose a problem and recommended that we survey all their employees. We will work with a few of the potential respondents to determine how to impart our statistical requirements in written instructions.

Another concern we discussed was anonymity. Those businesses we consulted feel that employees are more likely to return the questionnaires with accurate responses if we can assure them that the employer would not see any of the responses and would not know if the employee had responded or not. Employees are very sensitive to access of their personal information, and we feel that good response will require that we provide assurance of confidentiality.

Anonymity, sampling of employees, and operational considerations will be considered during the 60-day comment period and we would particularly welcome any ideas or concerns on these issues.

III. Data

OMB Number: Not available.

Form Number: NES 2000.

Type of Review: Regular.

Affected Public: Employers in business establishments with 20 or more employees and employees of these establishments.

Estimated Number of Respondents: 3,000 employers and 15,000 employees.

Estimated Time Per Response: Employers 30 minutes, Employees 20 minutes.

Estimated Total Annual Burden Hours: 6,500 hours.

Estimated Total Annual Cost: There is no cost to the respondent other than the time required to complete the telephone interview. Employers that volunteer for the employee survey will incur a small cost in selecting the sample of employees and distributing the questionnaires to these employees.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Sections 8 and 9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 16, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–4195 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: On August 16, 1999, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This period of review (''POR'') is from August 1, 1997 through July 31, 1998. This review covers two manufacturers/exporters: Nippon Steel Corporation (''NSC'') and Kawasaki Steel Corporation (''KSC''). We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have made changes to our analysis. Therefore, the final results differ from those presented in the preliminary results of review.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Contact Doreen Chen, Brandon Farlander, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–0408, (202) 482–0182, or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. part 351 (1999).

Background

On August 16, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 44483 (August 16, 1999) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on our preliminary results. For NSC, we received written comments from petitioners (Bethlehem Steel Corporation and U.S. Steel Group (a unit of USX Corporation)) on September 15, 1999. We received a rebuttal brief from NSC on September 22, 1999. For KSC, we received written comments from petitioners and KSC on September 15, 1999. We also received a rebuttal brief from petitioners on September 22, 1999. We have now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2)thicknesses, including

coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate; (4) carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (5) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Fair Value Comparisons

To determine whether sales of subject merchandise from Japan to the United States were made at less than fair value, we compared the Export Price (''EP'') to the Normal Value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice. In addition, we made the following changes from the preliminary results:. For KSC, we adjusted VOH and VCOM. *See* Comment 4 below. Also, for KSC, we adjusted G&A to include certain items. *See* Comment 5 below.

Interested Party Comments

NSC

Comment 1: Petitioners argue that the Department should reject home market sales to a certain customer because the use of the sales to this customer results in unfair sales comparisons between EP and NV. Petitioners note that the number of respondent's home market (HM) sales matched to U.S. sales in which the customer is the same for both markets presents a ''remarkable situation.'' Petitioners note as well that for all such sales, the U.S. customer was also the importer of record. Additionally, petitioners note that the parent company of the U.S. customer was involved in the price negotiations with NSC.

Petitioners argue that it is a fundamental principle of the antidumping law that ''in determining whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value,'' citing section 773(a) of the Trade Act, as amended (19 U.S.C. 1677b(a)). Petitioners argue that a ''fair comparison'' cannot exist where the margin is based on U.S. sales that are compared with sales to the same customer in the home market and where both seller and customer have a ''direct financial interest in masking any dumping that may otherwise be taking place.''

Petitioners stress that such comparisons are inherently unfair because the prices are unreliable. Petitioners note that the antidumping statute and the Department's regulations and practice ''go to great lengths to ensure that the prices and in the home market and prices in the U.S. market are reliable and representative of sales in each market,'' citing section 773(a)(1)(B) of the Act (19 U.S.C. 1677b(a)(1)(B)) (requiring that normal value be based on sales made in the ordinary course of trade); section 773(a)(2) of the Act (19 U.S.C. 1677b(a)(2)) (providing that sales intended to establish a fictitious market shall not be used in determining normal value); section 773(f)(2) and (3) of the Act (19 U.S.C. 1677b(f)(2) and (3) (ensuring that the cost of a major input not be valued at the transfer price if such price is below market value or less than cost); section 772(d) of the Act (19 U.S.C. 1677a(d)) (requiring certain adjustments to U.S. price where the merchandise is sold through an affiliated U.S. supplier); and 19 C.F.R. section 351.403 (c) (providing that sales to affiliated parties that are not at arm's length prices not be used in determining normal value).

Petitioners argue that in the final results of the fourth administrative review of this proceeding, the Department acknowledged that sales to the same customer in both markets could support the rejection of such comparisons on ''fair comparison'' grounds if other factors were present, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review,* 64 FR 12951, 12953 (March 16, 1999) (''*Fourth AD Final Results*''). Petitioners argue that the totality of circumstances in this review demonstrates that the comparisons based on sales to the same customer in both markets are unfair.

First, petitioners argue that the percentage of the comparisons based on sales to the same customer supports a finding that such comparisons are unfair. Second, petitioners argue that the customer at issue was the importer of record for the U.S. sales, and thus has a direct financial interest in ensuring that the margins on its sales would be low. Third, petitioners assert that NSC's home market prices to the customer at issue differs from home market prices to other customers for the same merchandise.

Petitioners stress that it is not necessary for the Department to find evidence of actual price manipulation in order to conclude that the comparisons in the margin calculation are unfair and improper. Petitioners assert that the Court of International Trade (''CIT'') has held that it is sufficient if the record shows a ''potential for price manipulation,'' citing *Koening & Bauer-Albert AG, et al.* v. *United States,* 15 F.Supp. 2d 834, 840 (CIT 1998) and *Koyo Seiko Co.* v. *United States,* 936 F. Supp. 1040, 1048 (CIT 1996).

Petitioners argue that the Department's conclusion in other cases that ''it is permissible for a respondent to reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices' of subject merchandise does not apply to the instant case, citing *Fourth AD Final Results,* 64 FR 12594, which in turn cites *Furfuryl Alcohol from Republic of South Africa,* 62 FR 61084, 61085 (November 14, 1997). Petitioners assert that in the ordinary case, such increases or decreases in price represent the respondent's selling practices in two different markets. Petitioners assert that in the instant case, by contrast, any such adjustments to price on merchandise sold to the customer at issue only represents NSC's selling practices to the customer at issue.

Respondent argues that petitioners' argument (that the Department should exclude the home market sales at issue because they tend to reduce or eliminate a dumping margin) turns the antidumping statute ''on its head.'' Respondent argues that any changes in pricing practices over time which reduce margins in fact represent the intended result of the antidumping statute. Respondent notes that the Department has stated (and in fact reaffirmed in the fourth review of this

proceeding) that: ''[T]he purpose of the antidumping duty statute is to offset the effect of discriminatory pricing between U.S. and home markets. Thus, while there is no statutory requirement that a firm must act to eliminate price discrimination, if it decides to do so, how it does so is within its own discretion * * * A firm may also choose to increase its U.S. prices and lower its home market prices at the same time.'' *See Taper Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan (''TRBs from Japan''),* 62 FR 11825, 11831 (March 13, 1997).

Respondent disagrees with petitioners' attempt to distinguish the instant review from the above cases and from the prior review. Respondent dismisses as baseless and irrelevant petitioners' contention that it is significant in this case that NSC's selling practices have not changed with respect to two different markets, but instead have changed with respect to one customer that has a direct financial stake in eliminating or reducing the margin. In this respect, respondent argues that petitioners offer no citation to the antidumping statute, regulations, or legislative history to support this distinction. Furthermore, respondent argues that petitioners' argument fails to acknowledge the distinction between the customer's physical location versus the ultimate country of destination. That is, respondent claims that the antidumping law considers NSC sales to the customer at issue to consist of sales to both the U.S. and home markets.

Finally, with regard to the potential for price manipulation, respondent argues that petitioners' allegations ignore the fact that the Department verified that NSC and the customer at issue are unaffiliated parties and that their transactions are at arm's-length. Respondent maintains that verification results show that any price changes since 1991 of NSC merchandise affected not only sales to the customer at issue, but also to other customers as well.

Respondent objects to petitioners' interpretation of the term ''fair'' in the statute. Respondent claims that ''fair'' under section 773 of the Act refers to the technical calculations that produce the essential terms '' EP or constructed export price (CEP), and NV '' of such a comparison. Respondent argues that ''fair'' signifies that calculations were made according to the relevant statutory criteria set forth in sections 772 and 773. Thus, respondent contends that a challenge as to whether a comparison is ''fair'' must allege that the Department has not followed the methodological approach set forth under sections 772 and 773 of the Act.

Respondent contends that the factual record does not support petitioners' assertions regarding a potential for price manipulation. Respondent argues that in past cases, including the fourth review of this case, the Department has held that comparisons between sales to the same customer in two markets are valid, citing *Fourth AD Final Results,* 64 FR at 12954. Respondent asserts that in *Color Television Receivers, Except for Video Monitors, From Taiwan,* 55 FR 47093, 47100 (November 9, 1990) (''*Color Television Receivers*''), the Department agreed with the respondent's position that ''nothing in the antidumping law or in the Department's regulations directs or authorizes the Department to ignore valid third-country sales for purposes of calculating normal value simply because those sales are made to a third-country purchaser who is related to the U.S. purchaser.'' *Id.*

Moreover, respondent argues that in the fourth review, the Department rejected petitioners' claim that NSC had a commercial incentive to manipulate prices in both markets, holding that ''the small number of sales to the customer at issue in the U.S. in comparison to the number of sales to the same customer in the home market lessens any commercial incentive for the respondent to suppress the prices of its comparatively higher volume home market sales in order to eliminate hypothetical margins in the much smaller U.S. market.'' *See Fourth Review Final Results*, 64 FR at 12955.

Respondent further argues that contrary to petitioners' claims, it is not remarkable that the customer was the same party or related to the party that was the importer of record. Respondent asserts that these factual circumstances exist in a number of antidumping cases. In addition, respondent disagrees with petitioners' claim that NSC's negotiations with the customer at issue or its customer's affiliate were improper or suggested evidence of manipulation. Respondent argues that the record shows that the sales processes criticized by petitioners are the same as those involving other customers and that the same circumstances existed in the fourth review.

Department's Position: As an initial matter, we note that petitioners raised, and the Department addressed, a number of these same arguments in the fourth review of this proceeding, and the facts on the record in the fourth review were significantly comparable to the facts on the record of this review. Specifically, as in the fourth review, there are a significant number of sales to one customer in both the home and U.S. markets; for these sales, the U.S. customer was also the importer of record; and the Japanese parent was involved in price negotiations with NSC. In the fourth review, the Department addressed petitioners' arguments that use of these home market sales: (1) would result in unfair comparisons; and (2) would be improper because the potential for price manipulation existed. The Department continues to disagree with these arguments, as we did in the fourth review for the reasons stated therein. *Fourth AD Final Results*, 64 FR at 12953–54. We particularly emphasize our full agreement with NSC's position that the ''fair comparison'' language of the antidumping law is not a ''stand alone provision.'' Rather, as NSC expressed it: ''far from being an open-ended term referring to some ill-defined notion of equity * * * the ''fair'' in ''fair comparison'' is a term of art that refers in shorthand to the technical calculations that produce the essential terms of such a comparison.'' We have concentrated our response in this review primarily on the new arguments raised by petitioners.

First, in constructing an argument that the sales comparisons at issue are improper and unfair, petitioners assert that NSC's home market prices to the customer at issue differ from home market prices to other customers for the same merchandise. This argument is tantamount to petitioners' companion argument that the sales are outside the ordinary course of trade. Therefore, we have addressed this argument in Comment 2 below.

Second, petitioners assert that this case differs from most cases with respect to a respondent's change in pricing practices in both markets, because in this case (in contrast) the sales to both markets are made to the same customer. We do not agree with petitioners that this distinction is compelling. As respondent has also noted, we find no support in either the antidumping statute, regulations, or legislative history for this distinction. In fact, as demonstrated by the fourth review, the Department's practice is to consider NSC's sales to the customer at issue in both the U.S. and home markets. The Department's discussion in *TRBs from Japan*, noted above by respondents, is particularly instructive in that the Department has identified U.S. prices and home market prices as the items which a respondent may wish to change in order to act to eliminate

price discrimination. This is, of course, because the purpose of the antidumping statute is to remedy the effect of discriminatory pricing between U.S. and home markets. In this context, the identity of the customer or customers affected by the respondent's altered pricing practices is not by itself a reason to disregard home market sales, except as otherwise contemplated under the statute (*e.g.*, affiliated party transactions).

Comment 2: Petitioners claim that the sales made to the customer at issue should be rejected because they constitute sales that are outside the ordinary course of trade. Petitioners submit that under the statute, the Department may reject various categories of home market sales because they are found to be outside the ordinary course of trade. Petitioners contend that although the Statement of Administrative Action (''SAA'') sets forth a variety of examples of sales that are outside the ordinary course of trade, the Department has the express authority to ''consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.'' *See* SAA, *reprinted* in 1994 U.S.C.C.A.N. 4040, 4171 (''SAA''). Petitioners argue that the statute provides no limits on the number of sales that may be excluded from normal value. Petitioners assert that it is the condition and circumstances, not the volume, of sales that renders a set of sales to be outside the ordinary course of trade. Petitioners claim that the Department has broad authority to ''consider other types of sales and transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.'' *Id.* Petitioners cite the SAA which states that: ''[T]he Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.'' *Id.* Petitioners quote the Department's statement that its authority in determining whether sales meet the ''ordinary course of trade'' standard is ''far-reaching.'' Petitioners assert that the Department, in conducting an inquiry relating to course of trade, examines all of the facts in their entirety to determine if sales were made for ''unusual reasons'' or under ''unusual circumstances,'' citing *Final Results of the Administrative Review: Electrolytic Manganese Dioxide from Japan*, 58 FR 28551, 28552 (May 14, 1993); and *Final Results of the Administrative Review: Gray Portland Cement and Clinker from Mexico*, 63 FR 12764, 12771 (March 16, 1998).

Petitioners assert that the Department recognized in the fourth administrative review that sales to a particular customer in the home market could be rejected as outside the ordinary course of trade if such sales are shown to be ''extraordinary transactions in relation to other sales transactions.'' *Fourth AD Final Results*, 64 FR at 12955. Petitioners maintain that in the fourth review, the Department failed to find that certain sales were outside the ordinary course of trade, stating that: ''[T]here is * * * no record evidence demonstrating any significant distinctions between the sales at issue and other home market sales. In particular, there is no evidence of a discernable pattern of lower sales prices to this customer as compared to NSC's other customers who purchased similar merchandise.'' *Id.* By contrast, petitioners assert, the record in the instant case does establish a significant difference between NSC's home market sales to the customer at issue and its sales to other purchasers. Petitioners maintain that the record shows a ''discernable pattern of lower home market sales prices'' to the customer at issue when compared to home market sales of similar merchandise to other customers. Petitioners argue that the Department considers whether selling prices to a particular customer are comparable to selling prices to other purchasers where the net prices to the customer in question are, on average, 99.5 percent of the prices to the other customers for the same merchandise, otherwise referred to as the ''arm's-length test.'' Petitioners assert that the ''arm's-length test'' is used to analyze sales to affiliates in the home market, and has repeatedly been upheld by the courts as an appropriate and reasonable test to determine price comparability, citing *SSAB Svenskt Stal AB* v. *Bethlehem Steel Corp.*, 976 F. Supp. 1027, 1030–31 (CIT 1997); *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994). Petitioners claim that application of the arm's-length test reveals that, on a CONNUM-by-CONNUM basis, NSC's prices to the customer at issue are on average below 99.5 percent of its prices to its other customers. While petitioners acknowledge that the arm's-length test is used by the Department to analyze transactions between affiliated parties, petitioners argue that the arm's-length test is an appropriate test of price comparability and has been upheld as such by courts.

Petitioners find baseless NSC's claim, in an August 3, 1999 letter to the Department, that NSC's sales practices with respect to the customer at issue are not out of the ordinary because they are consistent with the behavior that existed between the two parties in 1991 before the antidumping order was issued. Petitioners argue that NSC's claim, which rests on data supplied in Sales Verification Exhibit 37, fails for several reasons. First, petitioners claim that the comparison in Exhibit 37 was based on the average prices for all products, rather than on a CONNUM-by-CONNUM basis, as in the arm's-length test. Second, petitioners argue that in Exhibit 37, NSC compares sales to the customer at issue only to sales to other customers from the same industry as the customer at issue, thereby omitting all other sales. Petitioners further argue that there is nothing in the record to support the claim that prices to customers from the same sector as that of the customer at issue are either at a different level of trade, or otherwise not comparable to the prices to any other customer. Third, petitioners argue that it is not clear how NSC determined which sales were destined for these customers from the same sector. Fourth, petitioners argue that, at verification, NSC was unable to re-create its sales data as it existed in 1991 because it did not maintain all the necessary records.

Respondent argues that the law and verification results demonstrate that NSC's sales to the customer at issue are in the ordinary course of trade, and therefore, the Department must include these sales in the NSC's home market sales database, as the Department did in the fourth review. Respondent asserts that, in determining whether home market sales are in the ordinary course of trade, the Department ''must evaluate not just one factor taken in isolation but rather * * * all the circumstances particular to the sales in question,'' citing *CEMEX, S.A.* v. *United States*, 133 F.3d 897, 900 (Fed. Cir. 1998). Moreover, respondent asserts, the burden of proving that sales are outside the ordinary course of trade lies with the party making the assertion, citing *Antidumping Duties, Countervailing Duties: Final Rule*, 62 FR 27296, 27299 (May 19, 1997).

Respondent argues that petitioners make no allegation that NSC has engaged in any of the enumerated list of practices that are presumptively deemed to constitute conditions and practices

outside the ordinary course of trade as prescribed in section 771(15) of the Act, nor have petitioners alleged that the sales at issue are characterized by factors similar to those that have been found to constitute sales outside of the ordinary course of trade in other cases, citing *CEMEX*, 133 F.3d at 901–2; *Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom: Final Results of the Antidumping Administrative Review*, 58 FR 3253, 3256 (January 8, 1993); and *Manganese Metal from the People's Republic of China: Final Results of the Antidumping Administrative Review*, 60 FR 56045, 56046 (November 6, 1995).

Respondent argues that petitioners rely on a single factor to support their claim that the sales are outside the ordinary course of trade—that NSC's sales prices to the customer at issue differ from those to other customers. Respondent argues that this factor alone does not meet the legal standard enunciated in the statute, regulations, and case law in support of the contention. Respondent finds that petitioners' reliance on one factor, without taking into account other relevant facts (such as long-term relationship or largest customers) is inappropriate.

Further, respondent maintains that petitioners' analysis regarding NSC's pricing patterns with respect to the customer is based upon an inappropriate methodology. Respondent finds inappropriate petitioners' use of the ''arm's-length test'' for purposes of evaluating whether NSC's sales to the customer at issue were made in the ''ordinary course of trade.'' Respondent argues that the arm's-length test applies only to sales between affiliated parties and is not relevant for purposes of determining whether NSC's sales to the customer at issue are in the ordinary course of trade. First, respondent argues that the arm's-length test does not demonstrate pricing patterns, as argued by petitioner; rather, it measures a single average price of one customer against a single average price for a pool of customers at a particular point in time. Second, respondent argues that the arm's-length test does not provide a meaningful way to determine whether sales to the customer at issue were comparable to sales to customers in similar market segments. Respondent contends that the arm's-length test pools the entire universe of customers with common CONNUMs. Respondent maintains that the definition of CONNUMs is fairly broad, and thus the universe of sales examined under the arm's-length test can encompass more than one market segment. Respondent claims that price fluctuations between market segments are common and expected in the ordinary course of trade. Third, respondent argues that the petitioners' application of the arm's-length test to unaffiliated customers ignores commercial realities that may significantly and legitimately affect pricing. Respondent maintains that the Department's questionnaire even contemplates such different pricing considerations, as evidenced by the various fields for various pricing elements in its computer instructions for reporting sales. Finally, respondent argues that under petitioners' methodology, sales to a number of other unaffiliated customers would also have to be considered outside the ordinary course of trade. Respondent therefore concludes that using petitioners' methodology may lead to eliminating viable sales, leaving only the highest-priced home market sales as normal value.

Respondent further argues that the Department conducted an exhaustive review of the sales to the customer at issue and confirmed that they are bona fide arm's-length transactions. Respondent argues that the Department both verified and issued questionnaires regarding various aspects of NSC's relationship with the customer at issue. In particular, at verification, the Department examined a chart which compares NSC's corrosion resistant steel sales to the customer at issue and to other customers (from an industry sector similar to the customer at issue) in 1991 and during the fifth review period. Respondent argues that this chart, provided as Verification Exhibit 37, demonstrates that NSC's sales and pricing practices with respect to corrosion resistant steel destined to the customer at issue are consistent with its normal business behavior that existed before the corrosion resistant steel antidumping petition. Respondent maintains that the Department verified that the chart provided in Verification Exhibit 37 reconciled to NSC's audited financial statements and the Department found that ''the relationship between the 1997 Sales Journal and the MOF Report is consistent with that observed in 1991.'' *See NSC Sales Verification Report* at p. 11.

Respondent rebuts petitioners' arguments against the validity of Verification Exhibit 37. Respondent argues that petitioners are incorrect that the comparisons in Verification Exhibit 37 are invalid because the exhibit was based on ''average prices for all products, rather than on a CONNUM-by-CONNUM basis.'' Respondent argues that the data from the exhibit concerns sales made through a sales department which only sells corrosion resistant steel to a particular industry. Therefore, respondent maintains, the particular corrosion resistant steel sold to these customers is similar. Second, respondent argues, the exhibit is based only on sales to customers from the same industry, and thus is the most accurate foundation for price comparisons. Respondent argues that comparing NSC's sales to the customer at issue with sales to other customers from differing industries would distort the Department's analysis because such a comparison would include dissimilar products and reflect different market conditions. Respondent asserts this comparison is consistent with 19 U.S.C. § 1677(15)(section 771(15) of the Act), which calls for the examination of the ''conditions and practices * * * normal in the trade.'' Finally, respondent challenges petitioners' accusation that '' NSC was unable to re-create its sales data as they existed in 1991 because it did not maintain all the necessary records.'' Respondent maintains that the Department performed a quantity and value reconciliation on the 1991 data to ensure that it was compiled properly, and thereby verified the reliability of NSC's 1991 data.

Respondent argues that NSC's pricing to the customer at issue may have been slightly different from prices charged to other customers in the same industry during the period of review, but this difference is fully consistent with the long-term ''conditions and practices'' of NSC's business in the ordinary course of trade. Respondent argues that Verification Exhibit 37 shows that the rebates to the customer at issue on average as a percentage of price are unchanged from 1991. Respondent asserts that there are several legitimate commercial reasons why certain long-term customers are charged differently from other customers. Respondent submits that the record shows that the ''conditions and practices'' did not change materially between the periods of comparison and that NSC's sales to the customer at issue satisfy the statutory definition of sales in the ''ordinary course of trade.''

Department's Position: The statute and SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. Commerce must evaluate not just ''one factor taken in isolation but rather * * * [a]ll the circumstances

particular to the sales in question.'' *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993); *CEMEX*, 133 F.3d at 900.

In this respect, we believe that petitioners have drawn an inaccurate conclusion based on the Department's discussion of this issue from the fourth review period. The Department noted in that review that: ''[T]here is no record evidence demonstrating any significant distinctions between the sales at issue and other home market sales. In particular, there is no evidence of a discernible pattern of lower sales prices to this customer as compared to NSC's other customers who purchased similar merchandise.'' *See Fourth AD Final Results*, 64 FR at 12955. This statement should not be read to indicate that the mere presence of evidence, or even the actual existence, of lower average prices to one unaffiliated customer is sufficient evidence to consider a sale to be outside the ordinary course of trade. Thus, the arm's-length test, which was developed to determine whether sales between affiliated companies may be used, is not adequate to determine whether sales to an unaffiliated customer are outside the ordinary course of trade. Indeed, such a reading is contrary to the statute and, as NSC argues, would lead to disregarding large portions of sales databases submitted in many of the antidumping cases the Department administers. In fact, in the fourth review, the Department noted that there existed further factors which the Department considered, and which did not compel the Department to consider the sales in question to have been made outside the ordinary course of trade (*i.e.*, the relative volume of sales to the customer in both markets suggested there was little commercial incentive for the respondent to engage in the suppression of home market prices to eliminate hypothetical margins; there was nothing unusual about the fact that there were sales made to both markets through one customer; there was no other evidence demonstrating any significant distinctions between the sales to the customer at issue and other home market sales).

Therefore, as we did in the fourth review, we have evaluated the circumstances particular to the sales in question in reaching our final determination in this case. First, we note that the volume of sales to the customer at issue for the home market is large. We note that the existence of a small quantity of sales of a certain type is one factor Commerce considers when assessing whether sales had been made outside the ordinary course of trade. *See*, *e.g.*, *Mantex* v. *United States*, 17 CIT 1385, 841 F. Supp. 1290, 1307–08 (CIT 1993). While this fact alone does not mean that sales cannot be considered outside the ordinary course of trade if they were made in significant quantities, we note that the statute and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. As a general proposition, the more significant the sales to the customer in question are, in comparison to overall home market sales, the more difficult it becomes to separate the sales in question from those ''generally'' made in the home market. Therefore, we believe that as the percentage of sales in question rises, so should the overall evidentiary requirements supporting a finding of sales outside the ordinary course of trade be all the more rigorous.

We also find that the non-price factors we considered in support of our finding in the fourth review (*i.e.*, the relative volume of sales to the customer in both markets suggested there was little commercial incentive for the respondent to engage in the suppression of home market prices to eliminate hypothetical margins; there was nothing unusual about the fact that there were sales made to both markets through one customer) are equally applicable in this review.

With regard to relative pricing, we do not find the record evidence determinative in either direction. Specifically, while petitioners have argued that prices to the customer at issue demonstrate a ''discernable pattern of lower home market sales prices,'' we note that the test petitioners applied to reach their conclusion is a price comparability test (arm's-length test) which has been developed specifically to examine whether prices to affiliated parties are comparable to prices to unaffiliated parties in the home market. Petitioners have offered no rationale and no basis in law, Department regulations, or practice to support the proposition that the arm's-length test is the appropriate model for analyzing sales to an unaffiliated party. In this regard, we note that there do exist theoretical alternatives for conducting an analysis (*e.g.*, the pattern of price differences analysis which the Department has used in other cases to determine whether a level of trade adjustment may be warranted for different levels of trade, and respondent's own alternative analysis, as presented in Sales Verification Exhibit 37). On the other hand, we agree with petitioners that respondent's methodology takes the class of customer into consideration even though there is no evidence on the record to otherwise suggest that sales were made by NSC at different levels of trade during the period of review.

In summary, we believe that the evidence on the record supports a determination that these sales were made in the ordinary course of trade.

Comment 3: Petitioners note that there was an error in the model-match program which incorrectly referenced NSC's sales to its affiliate. NSC agreed with petitioners' comment and also found that the reference to the sales date of NSC's sales to its affiliate was incorrect.

Department's Position: We agree with petitioners and NSC and have modified the calculations for the final results of review accordingly.

KSC

Comment 4: Petitioners argue that the Department did not correctly adjust KSC's variable costs of manufacturing (''VCOM'') and variable overhead (''VOH'') in the preliminary results to eliminate the double-counting of labor costs contained in KSC's reported VCOM. Petitioners argue that the Department incorrectly adjusted for this double-counting by multiplying the supervisory portion of total direct labor costs from DIRLAB, and subtracting this cost from VOH. Instead, petitioners argue that the Department should have multiplied the direct labor portion of total labor costs by direct labor (''DIRLAB''), and subtracted this cost from VOH.

Respondent did not submit rebuttal comments on this issue.

Department's Position: We agree with petitioners and we have modified our recalculation of KSC's VOH and VCOM for the final results of review accordingly. *See Final Analysis Memorandum for KSC* (''*Final Analysis Memo for KSC*'') (February 14, 2000) (Business Proprietary Version) for the calculation.

Comment 5: Petitioners argue that the Department should adjust KSC's general and administrative (''G&A'') expenses to include the following items: (1) expenses on special retirement payment; (2) past service portion of pension cost; (3) extraordinary loss on disposal of tangible fixed assets; and (4) loss on disposal of fixed assets. Petitioners argue that the expenses from these four expense item categories were erroneously not included by KSC in its calculation of G&A. In support of their argument, petitioners cite the Department's original questionnaire,

dated September 30, 1998, D–20, which requests that KSC include ''period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise.'' Also, petitioners argue that the Department has, in past cases, included such expenses in the calculation of respondent's GA, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan* (''*Final Determination of Stainless Steel from Japan*''), 64 FR 30574, 30589–30591 (June 8, 1999); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (''*Preliminary Determination for Hot-Rolled Steel from Japan*''), 64 FR 8291, 8296 (February 19, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (''*Final Determination of Hot-Rolled Steel from Japan*''), 64 FR 24329, 24356–24357 (May 6, 1999).

Respondent did not submit rebuttal comments.

Department's Position: We agree with petitioners and have included the above four expense items in our calculation of KSC's G&A for the final results of review. The first three items are classified by KSC as extraordinary loss items and are from its audited non-consolidated financial statement (ending March 31, 1998), and the fourth item is classified by KSC as a non-operating expense from KSC's Ministry of Finance (''MOF'') report (ending March 31, 1998), which is filed with the Japanese government. We have used the financial statement period ending March 31, 1998 because it most closely corresponds to the POR. Although KSC has classified the first three items as extraordinary expenses under Japanese GAAP, we determine, as we did in prior cases for these types of expenses for KSC, that the first two expense items are not extraordinary. Therefore, we have included these expenses in our calculation of KSC's G&A expense rate. *See Final Determination of Hot-Rolled Steel from Japan* and *Final Determination of Stainless Steel from Japan*.

For KSC's losses on its disposal of fixed assets (items three and four, noted above), as stated in prior cases for these types of expenses for KSC, it is our practice to calculate G&A expenses using the operations of the company as a whole, regardless of whether these assets are used purely for the production of subject merchandise or non-subject merchandise. *See Final Determination of Hot-Rolled Steel from Japan* and *Final Determination of Stainless Steel from Japan*. We note that KSC excluded these losses from the disposal of fixed assets because they pertain to non-subject merchandise. As referenced in the above cases for KSC, our practice is to include the gains or losses from the disposal of fixed assets in GA. Therefore, in this case, we have included the losses on KSC's disposal of fixed assets in our calculation of KSC's G&A expense rate.

Comment 6: KSC argues that the Department's level of trade (''LOT'') analysis did not properly consider record evidence and violated established policies and regulations by combining, in the same home market (''HM'') LOT, direct sales to unaffiliated trading companies made by KSC and KSC's affiliated producer, Kawatetsu Galvanizing Co., Ltd. (''Kawahan'') (channel one) with resales to downstream purchasers through KSC's affiliated trading company, Kawasho Corporation (''Kawasho'') (channel three). KSC argues that Kawasho competes with the unaffiliated trading companies that purchased KSC- and Kawahan-produced subject merchandise, and the sales by Kawasho and these unaffiliated trading companies are at the same LOT. KSC argues that Kawasho's resales to downstream purchasers are at a different stage of marketing, and have different selling activities when compared to KSC's and Kawahan's direct sales, and should be treated by the Department as such for the final results. KSC argues that the Department's failure to segregate sales involving different marketing activities is a violation of the statutory directive to recognize separate LOTs when such levels involve the performance of different selling activities, citing 19 U.S.C. 1677b(a)(7)(A)(i) (1999)(section 773(a)(7)(A)(i) of the Act).

KSC further argues that the Department erroneously determined that channel one sales (unaffiliated trading companies) were at a different LOT from sales made from KSC and Kawahan to end-users (channel two), despite these sales being at the same marketing stage (*i.e.,* direct from the mill) and having comparable selling activities. Specifically, KSC argues that the selling activities for channels one and two are at similarly low levels of activity for end-user price negotiations, credit checks, and payment collection.

KSC argues that the Department underestimated the selling activities in channel three by not examining Kawasho's selling activities. KSC argues that the Department must analyze the selling activities of KSC, Kawahan, and Kawasho for the reported sales through channel three. KSC notes that, contrary to the Department's preliminary finding that there were nine selling activities through channel three, sales in channel three have twelve selling activities when Kawasho's selling activities are also considered. KSC argues that Kawasho exclusively performs the following three additional selling activities: credit checks, arranging for freight, and payment collection. KSC further argues that the channel three selling activities are at a significant level for all twelve selling activities. In contrast, KSC argues that eight of these twelve selling activities are either not offered or offered at minimal levels through channel one. KSC then argues that the Department is not constrained to combine channels one and three into one LOT just because there are several similar selling activities that are offered in both channels, citing the Preamble to the Department's regulations, *Final Rule*, 62 FR at 27371; and the SAA at 830, 1994 U.S.C.C.A.N. at 4168.

KSC also cites 19 C.F.R. 351.412(c)(2) to support its argument that the Department finds sales at separate LOTs if the sales are at different marketing stages. KSC argues that channel one sales involve only one marketing stage (producer to unaffiliated party), while channel three sales involve two marketing stages (producer to affiliated party, then affiliated party to unaffiliated purchaser). Thus, KSC argues that channel one sales are at a less-developed stage in the marketing process than are channel three sales.

Finally, KSC argues that the Department must consider where in the distribution chain the reported sales are made, citing a Department policy bulletin, which states:

> In asking for LOT information, the Department is trying to determine where in the distribution chain the respondent's customer falls (end user, distributor, retailer). The presumption is that the net price and/or selling expenses and, therefore, the foreign market value (FMV) are different at each LOT. *See Import Administration Policy Bulletin 92/1* at 2.

KSC notes that the Department's determinations in recent cases support its argument. First, KSC cites *Preliminary Determination for Hot-Rolled Steel from Japan*, 64 FR 8291, 8297 (February 19, 1999) (upheld at final), in which, under the same set of circumstances, the Department determined that the following two LOTs existed: (1) LOT one, which consists of sales to unaffiliated trading companies and end-users; and (2) LOT two, which

consists of downstream sales through Kawasho). Also, KSC cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France* (''*Final Determination for Stainless Steel from France*''), 64 FR 30820, 30824 (June 8, 1999), in which KSC notes that the Department determined that two LOTs existed, with one LOT consisting of sales to unaffiliated trading companies and end-users (LOT one), and the other LOT consisting of downstream sales through an affiliate (LOT two). KSC argues that, in this case, the Department determined that two LOTs existed because sales through the affiliate were made at a more remote marketing stage than sales in LOT one, and that there were significant distinctions in selling activities between the two LOTs. Finally, KSC argues that in *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France* (''*Preliminary Determination for Cut-To-Length Steel from France*''), 64 FR 41197, 41200 (July 29, 1999), the Department determined that there were two LOTs on the basis that downstream sales through the affiliate were at a more remote marketing stage, and there were distinctions between the marketing activity for the distribution channels.

Furthermore, KSC argues that the differences in marketing functions and selling activities among the channels of trade are reflected in KSC's reported indirect selling expenses, which KSC argues are higher as an aggregate percentage of channel three sales than of channels one and two sales. KSC asserts that the weighted average of indirect selling expenses as a percentage of gross unit price for channel three sales is approximately double the corresponding expense figures for channels one and two, and that the expense figures for channels one and two are relatively close. KSC argues that, according to the Department's regulations and past practice, such differences in selling expenses give credibility to a LOT claim, citing the Preamble to Department's regulations, 62 FR at 27371, which states that: ''Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different levels of trade,'' and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190, 35193 (June 29, 1998) (''[W]ith respect to the level of selling expenses involved at each channel of distribution, our examination of the expenses reported to the home market sales indicates that * * * the per-unit indirect selling expenses are higher for sales made through LOT C than for those made at LOT A/B. Consistent with the Department's practice and regulations, we have considered this as an additional factor in our determination that LOT C is separate from, and more advanced than, LOT A/B.'')

Finally, KSC argues that it should be allowed a LOT adjustment, if the Department continues to combine channels one and three at a separate LOT. KSC argues that there exists a consistent pattern of price differences between channel three sales compared to sales through channels one and two in support of this argument.

Petitioners did not comment on this issue.

Department's Position: We disagree with KSC in part. While KSC is correct that the Department failed to consider Kawasho's selling activities when analyzing the selling activities for channel three sales, we find that an analysis of the selling activities offered for all three channels of trade shows that all HM sales have been made at the same LOT.

In the *Preliminary Results*, the Department first noted that KSC and Kawahan sold subject merchandise to two types of customers: (1) Trading companies (affiliated or unaffiliated), and (2) end-users, which represent two different points in the chain of distribution between the producers and the final end-user. *See Preliminary Results*, 64 FR at 44485. As a result, we noted that these sales to different points in the distribution chain to appear to represent different levels of trade in the home market.

Next, the Department examined the selling activities reported for each type of customer. Specifically, the Department noted that certain differences existed with respect to the selling activities KSC and Kawahan performed in making sales to these two types of customers (*i.e.*, trading companies and end-users). As a result, the Department concluded the following:

> Based on the different points in the chain of distribution and the differences in selling functions between the trading companies and the end-users, the Department preliminarily finds that two levels of trade exist for KSC's sales in the home market.*Id.*

For this final results, we have reconsidered our preliminary findings. Specifically, we agree with KSC that it is appropriate for the Department to also consider the selling activities offered for the reported sale, which, in the case of channel three sales, includes any selling activities performed by Kawasho, the affiliated reseller. As a result of consideration of these additional selling activities, we now find that the selling functions among all three channels of trade are sufficiently similar to warrant a determination that there exists only one level of trade in the home market.

In our analysis to determine that there was one level of trade in the home market, we examined the following twelve selling activities: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, payment collection, and evaluating warranty claims.

For channel one (KSC or Kawahan sales to unaffiliated trading companies), we determine that eleven of the twelve selling activities were performed, with the following seven selling activities being performed at a low level: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, and daily issues end-user contact. Finally, KSC and Kawahan do not perform payment collection.

For channel two (KSC or Kawahan sales to end-users), we determine that all of the above twelve selling activities are performed; however, credit checks, end-user price negotiations, and payment collection are performed at a low level.

For channel three (the selling activities of KSC and Kawasho or Kawahan and Kawasho combined), all twelve selling activities are performed.

Based on the above selling activities, all or virtually all of the selling activities are performed in all three channels, although at somewhat different levels in certain cases. Thus, on an overall basis, it appears that all three channels offer similar selling activities.

We wish to stress that while the Department may consider differences in the distribution chain, equally important in making a level of trade determination is the level of selling activities. This principle was explicitly noted in the preliminary results, in which we stated that: ''To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.'' *See Preliminary Results*, 64

FR at 44484; *see also* 19 C.F.R. § 351.412(c)(2).

KSC cites several cases in support of its argument that channels one and two should be in one LOT and channel three in a separate LOT. KSC's reliance on *Final Determination for Hot-Rolled Steel from Japan, Preliminary Determination for Cut-To-Length Steel from France,* and *Final Determination for Stainless Steel from France* is without merit. We examined record evidence from the *Final Determination for Hot-Rolled Steel from Japan*, and have determined that while KSC had the same three HM channels as in the instant case, we did not determine that KSC's sales through Kawasho (channel three) represent a separate LOT, as KSC had requested. Instead, we determined that sales to end-users, either direct (channel two) or via Kawasho (channel three), were at one LOT and sales to unaffiliated trading companies (channel one) were at another LOT. We made this determination based on the KSC's selling activities, which are at different levels when compared to the selling activities in the instant case. We also examined record evidence regarding the *Preliminary Determination for Cut-To-Length Steel from France* and *Final Determination for Stainless Steel from France* cases, and we have confirmed that we created separate LOTs for sales through affiliates. However, in those cases, we determined to create separate LOTs for sales through affiliates because those sales were made at a more remote marketing stage than other sales, and there were significant distinctions in selling activities between the LOTs, which is not the case here. Accordingly, all the cases relied upon by KSC are distinguishable from the instant case.

The Department's concentration on examining differences in selling activities when making level of trade determinations is well-established, including in cases involving this respondent. *See e.g., Final Determination of Stainless Steel from Japan*, 64 FR at 30580 (''Based on the above-referenced distinctions between the selling functions of KSC to end-users and those of KSC to affiliated trading companies, and then to unaffiliated customers, we consider the respondent's request that the Department treat KSC's sales to all end-users as one level of trade to be unpersuasive.''); *Preliminary Determination for Hot-Rolled Steel from Japan*, 64 FR at 8298 (upheld at final) (''Based upon our analysis, we found a difference in the selling functions performed on EP sales as compared to sales at each of the two distinct levels of trade in the home market. Therefore, the Department preliminarily determined that the information on the record justifies treating KSC's EP sales as having been made at a different LOT from the two home market levels of trade''). Therefore, in keeping with recent Departmental practice, we consider the similarities in selling activities to all home market customers are significant enough to preclude a determination that separate levels of trade exist with respect to sales made through different distribution channels.

With regard to KSC's discussion of indirect selling expenses, we examined indirect selling expenses and we agree with KSC that Kawasho's weighted average indirect selling expenses as a percentage of gross unit price, for channel three sales, is approximately double the same corresponding figures for channels one and two, and that the figures for channels one and two are relatively close. We also agree with KSC that the Department has stated that substantial differences in the amount of selling expenses associated with two groups of sales may indicate that the two groups are at different levels of trade. However, we determine, in the instant case, when comparing Kawasho's and KSC's/Kawahan's indirect selling expenses, that the difference is not significant enough as a percentage of total sales to consider reversing our decision that channel three is in a separate LOT than channels one and two. In addition, any differences in indirect selling expenses among the three channels are outweighed by the overall similarities in selling activities.

Finally, KSC's argument regarding an LOT adjustment based on a finding of a consistent pattern of price differences among HM LOTs is moot because we have determined that there is only one HM LOT.

As stated in *Preliminary Results*, we determined that the sole U.S. sale in channel one (unaffiliated trading company) was at the same LOT as the HM sales to trading companies. However, for the final results, we have determined that the U.S. selling activities are different from the HM LOT. Based on record evidence, KSC reported that, for the sole U.S. sale, KSC only performed (or may perform) two of the twelve selling activities: end-user price negotiations and evaluating warranty claims. Based on the differences in the selling activities performed in the HM LOT and U.S. LOT, we determine that record evidence justifies treating KSC's U.S. EP sale as having been made at a different LOT than the HM LOT.

If the comparison-market sales are at a different LOT and the difference affects the price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Here, we have determined that there is one LOT in the HM, and that this HM LOT is at a different LOT than in the United States. However, KSC has not established that the difference had an effect on price comparability by demonstrating a pattern of consistent price differences in the home market. *See* 19 C.F.R. § 351.412(d), and 351.401(b)(1). Furthermore, we have independently examined additional information reasonably available to us, including information from the other respondent in this review (NSC), but have been unable to identify information which could establish a pattern of consistent price differences. Therefore, because we have no information to establish that the difference in LOT affected price comparability, we did not adjust NV for the U.S. sale comparison to HM sales made at a different LOT.

Comment 7: KSC argues that the Department does not have the authority, either in the antidumping statute or in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (*''Antidumping Agreement''*), to exclude HM sales to affiliated parties that purchase goods for consumption on the basis of their failure to pass the arm's-length test. KSC argues that the antidumping statute is explicit (both with respect to home market sales and U.S. sales) with regard to which sales the Department may exclude from its margin analysis. Specifically, concerning home market sales, KSC argues that the Department may consider excluding only the following home market sales: (1) sales to affiliates who sell to downstream customers (section 773(a)(5) of the Act); and (2) sales that fail the cost test (section 773(b)(1) of the Act).

Also, KSC argues that the Department's application of the arm's-length test is illegal and, in fact, unconstitutional because it eliminates sales to affiliates (irrespective of whether for consumption or resale) if there are no sales of an identical product to unaffiliated customers. The Department's exclusion of these unmatched affiliated sales violates the *Antidumping Agreement* and U.S. antidumping laws, KSC argues, without evidence that these sales were not made at arm's length. KSC argues that the

statute instructs the Department to provide a ''fair comparison'' between the export price or constructed export price and normal value, citing 19 U.S.C. 1677b(a) (1999)(section 773(a) of the Act). KSC further notes that the WTO Antidumping Agreement specifies that the Department must include all sales, unless including certain sales affects price comparability, citing Article 2.4 of the *Antidumping Agreement*.

KSC continues that the Department, by automatically excluding these non-matched sales, violated its due process, as guaranteed under the Fifth Amendment to the U.S. Constitution, in not allowing KSC to demonstrate that these non-matched sales were made at arm's length, citing *NEC Corp.* v. *United States,* 151 F.3d 1361, 1370 (Fed. Cir. 1998), *cert. denied,* 119 S.Ct. 1029 (1999); and *Techsnabexport, Ltd.* v. *United States,* 795 F. Supp. 428, 435–36 (CIT 1992). KSC claims that the Department's exclusion of these non-matched affiliated party sales amounts to an irrebuttable presumption of fact that violated KSC's due process, citing *Rogers* v. *United States,* 575 F. Supp. 4, 9–10 (D. Mont. 1982); and *Universal Restoration, Inc.* v. *United States,* 798 F.2d 1400, 1406 (Fed. Cir. 1986). According to KSC, the Department has presumed that these non-matched sales were made at less than arm's-length prices. However, KSC argues that not all sales to affiliates were made at less than arm's-length prices; hence, the Department's presumption that all non-matched sales to affiliates were not at arm's-length prices cannot be universally true, citing *Steven M.* v. *Gilhool,* 700 F. Supp. 261, 264–65 (E.D. Pa. 1988) (an irrebuttable presumption can only survive if the proposition on which it is based is universally true).

Finally, KSC argues that the Department, in its arm's-length test, analyzed sales to certain customers by customer-facility rather than by customer. KSC argues that where a customer has multiple delivery locations, the Department should collapse those facilities into a single comparison for the customer.

Petitioners argue that the statutory language cited by KSC in fact provides the Department with the discretion to use affiliated party sales in determining normal value. Specifically, petitioners note that the statute states that: ''If the foreign like product is sold * * * through an affiliated party, the prices at which the foreign like product is sold * * * by such affiliated party may be used in determining normal value.'' 19 U.S.C. 1677b(a)(5)(section 773(a)(5) of the Act)(emphasis by petitioners). Petitioners continue that the SAA states that: ''[S]ection 773(a)(1)(B) permits (but does not require) Commerce to base normal value on sales to related (now affiliated) parties in the home market. However, Commerce will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's length prices for purposes of calculating normal value.'' *See* SAA at 827, *reprinted* in 1994 U.S.C.C.A.N., 4040, 4166.

Petitioners also argue that the Department's regulations, including 19 C.F.R. 351.403(c), 351.403(d), and 351.102, outline the circumstances under which it will exercise its discretion to include or exclude certain sales made to or through affiliated parties. Specifically, petitioners note that 351.403(c) states that the Department will use sales to affiliated parties ''only if [the Secretary is] satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.''

Petitioners continue that the CIT has upheld the Department's application of the arm's-length test in a number of cases, including, *e.g., Sanyo Elec. Co.* v. *United States,* Slip Op. 99–49 (CIT June 4, 1999); *NTN Bearing Corp.* v. *United States,* 905 F. Supp. 1083, 1100 (CIT 1995); *SSAB Svenskt Stal AB* v. *United States,* 976 F. Supp. 1027, 1030–31 (CIT 1997); *Micron Tech. Inc.* v. *United States,* 893 F. Supp. 21, 38 (CIT 1995); and *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1004 (CIT 1994).

Finally, petitioners argue that, contrary to KSC's argument, section 773(a)(5) grants the Department the authority to include (not exclude) the sales of affiliated resellers. Petitioners argue that the statute does not limit the Department's authority to exclude sales to affiliates simply because these affiliates consume the merchandise; in fact, petitioners argue that sales to affiliates for consumption may be as unrepresentative of normal selling practices as sales to affiliates for resale. Therefore, petitioners argue that, in *Preliminary Results,* the Department properly excluded sales which failed the arm's-length test.

With respect to the exclusion of non-matched home market affiliated party transactions, petitioners note that it is the Department's practice to exclude sales to affiliated parties if there were no non-affiliated party sales of identical merchandise. Without non-affiliated party sales of identical merchandise, petitioners note, the Department has stated that it is unable to determine whether these sales were made at arm's length, citing, *e.g., Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993); *Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 64 FR 48775, 48776 (September 8, 1999); *Certain Cut-to-Length Carbon-Quality Steel Plate from France,* 64 FR 41198, 41201 (July 29, 1999); and *Stainless Steel Wire Rod from Sweden,* 63 FR 40449, 40454 (July 29, 1998). Petitioners note that section 351.403(c) of the Department's regulations state that the Department may use sales to affiliated parties if these prices are comparable. Petitioners argue that the courts are supportive of the proposition that it is the respondent's burden, and not the Department's burden, to prove that a sale to an affiliated party was made at arm's length, citing, *e.g., Sanyo Elec. Co.,* Slip Op. 99–49 (CIT June 4, 1999); and *NEC Home Elecs., Ltd.* v. *United States,* 54 F.3d 736, 744 (Fed. Cir. 1995)).

In addition, petitioners argue that KSC did not provide evidence that these sales to affiliated parties were at arm's length, nor that the Department's exclusion of these sales would violate the U.S. Constitution and the ''fair comparison'' provision of the antidumping statute. Finally, petitioners argue that the Uruguay Round Agreements, including the WTO Antidumping Agreement, are not self-executing and thus their legal effect in the United States is governed by the implementing legislation; and furthermore, that the WTO Antidumping Agreement does not trump U.S. legislation, where there is regulatory and legal support for the exclusion of non-matched sales, citing *Hyundai Elecs. Co.* v. *United States,* 53 F. Supp. 2d 1334, 1343 (CIT 1999); and *Suramerica de Aleaciones Laminada, C.A.* v. *United States,* 966 F.2d 660, 668 (Fed. Cir. 1992).

Department's Position: We disagree with KSC in part. Departmental regulation 19 C.F.R. 351.403(c) is clear that the Department will include sales to an affiliated party only if we are satisfied that the price is comparable to the price sold to a person who is not affiliated with the seller. No distinction has been made in this section of the regulations with regard to the final disposition of the merchandise sold to the affiliated party. The statutory authority stems directly from section 773(a)(1)(B) of the Act, which (as noted above by petitioners) the SAA has explicitly clarified to mean that Commerce ''will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating normal value.'' *See* SAA at 827,

reprinted in 1994 U.S.C.C.A.N., at 4166. Furthermore, we agree with petitioners that the courts have upheld the Department's authority to exclude sales, either for consumption or resale, that have not been established to be at arm's-length prices pursuant to our arm's-length test. *See, e.g., Sanyo Elec. Co.* v. *United States,* Slip Op. 99–49 at 16–17 (CIT June 4, 1999). There are no matching sales to unaffiliated parties in this case which would allow us to determine whether the sale to the affiliated party was made at arm's length. Therefore, we find that the Department has the authority to exclude these sales to affiliated parties, whether consumed or resold, because it has not been established that they were made at arm's-length prices.

With regard to KSC's argument that the exclusion of unmatched sales to affiliated parties violates the Fifth Amendment to the Constitution, we disagree. As petitioners have noted, the burden of proving that affiliated party prices are at arm's length does not rest with the Department. In fact, the Federal Circuit has specifically stated, in *NEC Home Elecs.,* that the CIT properly rejected NEC's suggestion that ''Commerce must carry the burden of proving that NEC's related party price is not an arm's length price.'' *NEC Home Elecs.,* 54 F.3d at 744. As petitioners have noted, KSC has provided no such evidence.

The presumption, as upheld by the courts, is that respondent must carry the burden of showing that transactions between affiliated parties should be used in calculating normal value. This presumption is carried through in the Department's regulations, at 19 C.F.R. 351.403(c). This regulation states that we may use sales to affiliated parties if these prices are comparable to sales to non-affiliated party sales. *Id.* (emphasis added). Therefore, because we were unable to determine if these sales to affiliated parties were comparable to sales to unaffiliated parties, we properly excluded them from our calculation of normal value in the *Preliminary Results.* Of course, the Department's authority to exclude such sales has indeed been exercised in numerous cases. *See, e.g., Stainless Steel Wire Rod from Sweden,* 63 FR 40449, 40454 (July 29, 1998).

Finally, we agree with KSC that, for sales of merchandise to affiliated parties for which we could make an appropriate unaffiliated party comparison, in the *Preliminary Results,* we did not perform the arm's-length test on a customer-specific basis, but inadvertently analyzed certain sales on the basis of divisions or delivery points within a single customer. Also, we agree with KSC that, at verification, it provided unique identification numbers so that the Department could collapse customer's divisions or delivery points into a single customer code. *See Sales Verification Exhibit 24.* Therefore, for the final results, we collapsed those customer codes which represent divisions or delivery points into a single customer, because it is the Department's practice to analyze sales on a customer-specific basis.

Comment 8: KSC argues that the Department correctly used KSC's and Kawahan's invoice date as the date of sale in the *Preliminary Results.* KSC asserts that the Department verified that KSC's and Kawahan's material terms of sale can and do change between the order date and the invoice date. KSC argues that using the invoice date is more efficient than using other dates as the date of sale because invoice dates are used by KSC, Kawahan, and Kawasho in their books and records, and that, moreover, these companies either do not issue order confirmations or do not maintain order confirmation records. KSC also argues that the use of invoice date is consistent with the other dumping cases in which KSC has been involved, citing *Final Determination of Stainless Steel from Japan,* 64 FR at 30586–30587; *Preliminary Determination for Hot-Rolled Steel from Japan,* 64 FR at 8294; and *Final Determination of Hot-Rolled Steel from Japan,* 64 FR at 24334. In this regard, KSC argues that it uses the same invoicing system and sales processes for the steel products from the above two cases as with subject merchandise. Furthermore, KSC argues that the above two final determinations serve as the Department's reaffirmation of its practice of using invoice date as the date of sale if the material terms of sale can change between order date and invoice date, even if changes are not frequent, and the reporting company uses invoice date in its internal records.

KSC also notes that the Department's regulations state that it will normally use for the date of sale the invoice date as recorded in the exporter or producer's records kept in the ordinary course of business, as long as the Department does not find that some other date is more appropriate, citing 19 C.F.R 351.401(i). KSC notes that the selection of invoice date as date of sale has been justified under this regulation in numerous instances, citing, *e.g., Final Determination of Stainless Steel from Japan; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part,* 64 FR 2173, 2178 (January 13, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand (''Canned Pineapple Fruit From Thailand, 95–96 Final''),* 63 FR 43661, 43668 (August 14, 1998); *Carbon Steel Wire Rope from Mexico; Final Results of Antidumping Duty Administrative Review,* 63 FR 46753, 46755 (September 2, 1998).

In addition, KSC argues that the Department's Preamble to its regulations (*''Preamble''*), 62 FR 27296, 27348 (May 19, 1997), supports the proposition that the Department prefers to use a single date of sale for each respondent to simplify the reporting and verification of information. Thus, KSC argues that because it uses invoice date in its books and records, using the invoice date as the date of sale simplifies the reporting of information and its verification, which results in an efficient use of KSC's and the Department's resources. KSC then argues that the Department has stated in the Preamble, and has demonstrated in practice, a presumption that the date of sale is the invoice date unless there is satisfactory evidence that the terms of sale were finally established on a different date, citing the *Preamble,* 62 FR at 27349; *Canned Pineapple Fruit From Thailand, 95–96 Final;* and *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review,* 63 FR 55578, 55587–88 (October 16, 1998).

Petitioners argue that the record does not support KSC's assertion that the invoice date should be the date of sale. Petitioners note the Department's preference for using the invoice date as the date of sale; however, petitioners also point out that the section 351.401(i) of the Department's regulations state that another date may be used if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Petitioners argue that the Department will not use the invoice date where the ''material terms of sale usually are established on some date other than the date of invoice,'' citing *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7394 (February 13, 1998); *Preamble,* 62 FR at 27349; and *Canned Pineapple Fruit From Thailand, 95–96 Final.* Also, petitioners note that the Department has stated that: ''If [the] invoice date does not reasonably approximate the date on which the material terms of sale were made in either of the markets under

consideration, then its blanket use as the date of sale in an antidumping analysis is untenable,'' citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, 32835–36 (June 16, 1998).

Petitioners argue that, based on KSC's case brief and response, KSC's and Kawahan's selling processes demonstrate that the material terms of sale are established at the order confirmation date. Petitioners argue that KSC has stated that its and Kawahan's customers agree to the material terms of sale at the time of order confirmation, and that subject merchandise is made-to-order, then invoiced and shipped.

Thus, petitioners argue that the invoice date would be used as the date of sale only if the record demonstrates that there are frequent changes to the material terms of sale between the order confirmation date and the invoice date/shipment date. Petitioners note that the Department has stated that it will use the order confirmation date if, for a large majority of sales, the essential terms of sale do not change between order date and invoice date, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664, 30682 (June 8, 1999).

Petitioners disagree, based on the record, that KSC has met the standard set by the Department's regulations and practice to use the invoice date as the date of sale. Petitioners note that KSC stated that it was unable to determine whether the changes between the order confirmation date and the invoice date were material, citing Kawasaki's Response to the Department's Supplemental Section B Questionnaire, dated January 11, 1999, at pp. B–1–2 (Public Version) (in which KSC stated that it and Kawahan's record systems do not allow KSC to ''determine the types of changes that occurred (*i.e.,* whether the change is to significant terms, such as price and quantity) or to insignificant terms''). Petitioners note that KSC reported that it was unable to determine which specific term(s) of the order changed or whether changes after an order confirmation were major or insignificant, citing Kawasaki's Response to the Department's Supplemental Section A Questionnaire, dated December 4, 1998, at pg. 4 (Public Version). Thus, petitioners argue that the percentage figures regarding the frequency of changes cannot be relied on for date of sale purposes, noting that the revisions to the orders could have involved immaterial items, such as payment terms, packing method, or a change in the spelling of a customer's name. In addition, petitioners note that KSC has reported that, for KSC, Kawahan, and Kawasho, changes to the terms of sale between the order confirmation date and the invoice date/shipment date are infrequent, citing KSC's October 28, 1998 response, at pp. A–41—A–42. Finally, petitioners argue that, at verification, the Department verified the percentage figures regarding the frequency of changes based on KSC's computer system, and did not examine the nature of the changes.

Department's Position: We agree with KSC that the invoice/shipment date is the most appropriate date on which the material terms of sale (*e.g.,* price, quantity, or material specification) is established. Therefore, for the final results, and consistent with the *Preliminary Results,* we determine that the invoice/shipment date best reflect the date on which the material terms of sale is established.

As stated in the *Preliminary Results,* it is the Department's current practice normally to use the invoice date as the date of sale. *See Preliminary Results,* 64 FR at 44486. However, we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i).

At verification, we confirmed that KSC's and Kawahan's material terms of sale (*e.g.,* price, quantity, or material specification) can and do change between the order or order confirmation date and the invoice date/shipment date. While we agree with petitioners that the percentage change figures provided by KSC in their questionnaire response submission of March 22, 1999, at pg. 6, are not instructive because they include changes which were non-material in nature, we agree with KSC that the Department verified that the material terms of sale can and do change after order confirmation date. Specifically, we note that the information obtained at verification, including specific information gathered for ten HM verification sales trace exhibits, supports KSC's record statements that material terms of sale can and do change. Based on our examination of this information, we believe that KSC's invoice/shipment date is the most appropriate date to use as the date of sale. Because the results of our analysis contain proprietary information, *see Final Analysis Memo for KSC.*

Comment 9: KSC claims that the Department's decision, in the *Preliminary Results,* to excuse KSC from reporting certain downstream sales is consistent with its regulations and practice, and requests that the Department affirm its decision in the final results, citing, *e.g., Extruded Rubber Thread From Malaysia,* 57 FR 38465, 38468 (August 25, 1992) (Final Determination) (where, in an antidumping investigation, the Department stated that it does not need to investigate each and every U.S. sale); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996) (where, in an antidumping investigation, the Department stated that it is not required to examine every sale).

KSC notes that the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. Additionally, KSC notes that the Department stated, in the *Preliminary Results,* that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales.

KSC argues that in a factually similar case, the Department did not require the reporting of an affiliate's downstream sales where such reporting would represent a significant or impossible burden, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews (''Antifriction Bearings''),* 63 FR 33320, 33341 (June 18, 1998) (where, KSC argues, the Department stated that the respondent attempted to obtain affiliated downstream sales but was unable to because the affiliates were small companies with unsophisticated computer systems that do not permit them to retain the sales data required by the Department).

KSC notes that the Department has excused respondents from reporting downstream sales because of the burden of reporting these sales relative to the potential utility of the sales, citing, *e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews,* 62 FR 47422, 47424 (September 9, 1997); *Certain Cold-Rolled Carbon Steel Flat Products From Germany; Preliminary Results of Antidumping Duty Administrative*

Review, 60 FR 39355, 39356 (August 2, 1995); and *Certain Cut-to-Length Carbon Steel Plate From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47436, 47437 (September 9, 1997).

In this case, KSC argues that it acted to the best of its ability to report downstream sales by Kawasho's affiliates and reported such sales where possible. KSC argues that due to limitations in the record-keeping maintained by most of Kawasho's affiliates, which were noted several times in its response, KSC could not report sales by most Kawasho affiliates. KSC argues that, at verification, the Department compared Kawasho's sales invoices to its affiliates with the invoices from the affiliates' downstream sales, and notes that it was impossible to link the two together, citing the Department's Sales Verification Report, dated August 6, 1999, at pp. 12–13. KSC argues that, as stated in its response, because it is unable to trace the downstream sales to the original coil, it is impossible to report these sales in the form needed by the Department.

KSC additionally asserts that, at verification, the Department was unable to link sales by certain Kawahan affiliates to its downstream customers because there was not enough product characteristic information. KSC noted that, at verification, the Department examined documentation which KSC claims demonstrates that another of Kawahan's affiliates was unwilling to provide downstream sales information.

In conclusion, KSC argues that, based on verified evidence on the record demonstrating the impossibility of reporting downstream sales by certain affiliates, the Department must continue to excuse KSC and Kawahan from reporting such downstream sales.

Petitioners argue that KSC misunderstands the Department's reporting requirements in concentrating on the fact that KSC was unable to trace or link the affiliate's downstream sale to the original coil sold by KSC to the affiliate. Petitioners argue that the only Departmental requirement is that the producer of the merchandise sold downstream be the same producer whose sales are under review, citing section 771(16) of the Act. Petitioners note that the Department's questionnaire required KSC to report the sales from the affiliated resellers to the unaffiliated customers. Thus, petitioners argue that when an affiliated entity of the producer resells the subject merchandise, all resales of this producer's merchandise must be reported. Petitioners argue that there is no requirement that the resale be limited to sales by that producer to the affiliate.

Petitioners assert that it is irrelevant that KSC was unable to link certain downstream resales to the original coil, and that the Department has never required this linkage as a requirement to report these downstream sales. Petitioners argue that this is not a legitimate basis for failing to report certain downstream sales. In conclusion, petitioners argue that a respondent must report its affiliate's resales of its merchandise to unaffiliated parties during the relevant period to the fullest extent possible.

Department's Position: We agree with KSC that it was appropriate to excuse KSC from reporting certain downstream sales. The Department's questionnaire requires the reporting of sales from affiliated resellers to unaffiliated customers, unless the respondent's sales to all affiliated customers constitute less than five percent of the respondent's total sales in the home or third-country markets, or if the respondent is unable to collect information on such resales, in which case the respondent is instructed to notify the official in charge in writing. *See* the Department's questionnaire, dated September 30, 1998, pg. G–6; *see also* 19 C.F.R. section 351.403(d). In this case, we believe that the verified facts of the case do not support petitioners' assertion that KSC can report affiliated resales of KSC- and Kawahan-produced subject merchandise.

As stated in our *Preliminary Results,* in certain instances, KSC and Kawahan sell to an affiliate, Kawasho, which then sells the product to affiliated processors/distributors who further process the subject merchandise and sell it back to Kawasho. *See Preliminary Results,* 64 FR at 44487. The Department noted in the *Preliminary Results* that the verification results were consistent with KSC's claim that most of Kawasho's affiliated processors/distributors do not maintain the information necessary to report these downstream sales by Kawasho to the Department. *Id.* Thus, record evidence supports KSC's claim that it was unable to report certain Kawasho downstream sales of KSC- and Kawahan-produced merchandise to non-affiliates. Specifically, neither KSC nor its affiliates were able to determine (through, *e.g.,* identifying information such as Kawasho's invoice number or specific product characteristics) which Kawasho sales of subject merchandise were originally produced by KSC and/or Kawahan, as opposed to other producers.

In addition, as noted in the *Preliminary Results,* one of Kawahan's affiliated customers refused to provide its downstream sales data, despite Kawahan's request. Thus, because this affiliate refused to cooperate, despite Kawahan's attempt to collect this sales data (which the Department reviewed at verification, as noted in the Department's Sales Verification Report, dated August 6, 1999, at p. 11), we conclude that there is no evidence to contradict KSC's claim that it acted to the best of its ability to report this affiliates' downstream sales, despite its failure to report these sales.

Petitioners do not contest the above facts. Instead, they argue that these facts are irrelevant to the issue. We disagree. A respondent must be able to identify sales of subject merchandise it produced in order to accurately fulfill its reporting requirements. In this regard, section 771(16)(A) of the Act requires identification of: ''The subject merchandise * * * which * * * was produced in the same country by the same person.'' In this case, it would be improper for KSC to report all of Kawasho's downstream sales of the merchandise under review, because Kawasho sells subject merchandise from producers other than KSC and Kawahan. Therefore, in order to be able to properly identify sales of KSC's merchandise, Kawasho would have to be able to tie, though identifying information, such as an order confirmation number, its downstream sales back to KSC's or Kawahan's sale to Kawasho. Yet in this regard, KSC was unable to link certain resales to the original coil that it sold to the affiliate.

Thus, based on the above information and in accordance with past practice, we believe that it would not be appropriate to penalize KSC for its inability to report a certain portion of its (downstream) home market sales database, because we determine that, in the instant case, reporting these sales would represent an undue burden. *See, e.g., Antifriction Bearings*, 63 FR at 33341 (where the Department excused a respondent from reporting downstream sales information from its affiliates and accepted respondent's sales data to affiliates in lieu of sales by respondent's affiliates because its affiliates were small companies with unsophisticated computer systems which do not permit them to retain the sales data required by the Department).

With regard to the affiliated company which refused to provide the sales information, we note that the Department has stated, in the *Preamble*, that ''in instances where a respondent does not report downstream sales, the

Department will consider the nature of the affiliation in deciding how to apply facts available.'' *See Preamble*, 62 FR at 27356. As noted above, KSC attempted unsuccessfully to obtain the downstream sales information from this company. Given the level of affiliation (*see* KSC's October 28, 1998, Section A Questionnaire Response, Exhibit 14, which is proprietary information), we find that it is appropriate to simply disregard the downstream sales in question.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margin exists for the period June 30, 1997, through July 1, 1998:

Manufacturer/Exporter	Margin (percent)
Nippon Steel Corporation	2.47
Kawasaki Steel Corporation	1.61

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate importer-specific duty assessment rates on a unit value per metric ton basis. To calculate the per metric ton unit value for assessment, we sum the dumping margins on U.S. sales, and then divide this sum by the total metric tons of all U.S. sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate listed above (except that if the rate for a particular product is de minimis, *i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 36.41 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 14, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4250 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Oil Country Tubular Goods from Argentina: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On October 1, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Argentina (see Notice of Initiation, 64 FR 53318). The review covers the period August 1, 1998 through July 31, 1999, the company, Siderca, S.A.I.C. and its affiliated parties. We are rescinding this review because there were no consumption entries during the POR or OCTG from Argentina produced or exported by Siderca.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0193 or (202) 482–3833, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR Part 351 (April 1999).

Scope of the Review

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50,

7306.50.50, 7306.60.70, 7306.90.10. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Background

On August 31, 1999, the petitioner in this case, North Star Steel Ohio (North Star) requested an administrative review of OCTG produced or exported by Siderca, an Argentine producer and exporter of OCTG, or any other affiliated party. The antidumping duty order was published in the **Federal Register** on August 11, 1995 (60 FR 41055). On October 4, 1999, the Department issued a questionnaire to Siderca (see Letter from International Trade Administration to Siderca). On November 1, 1999, counsel for the petitioner, also requested that the Department conduct a duty absorption review to determine whether Siderca S.A.I.C. has absorbed antidumping duties in accordance with 19 CFR 351.213(j)(1)–(2) (1999).

SUPPLEMENTARY INFORMATION: In its October 7, 1999 response to petitioner's request for review and the subsequent issuance of the Department's questionnaire, Siderca certified that ''it did not, directly or indirectly, enter for consumption, or sell, export, or ship for entry for consumption in the United States subject merchandise during the POR.'' In addition, Siderca's U.S. affiliate, Siderca Corporation (which handles Siderca's merchandise in the United States) certified that it ''did not sell, enter, or otherwise import for consumption into the United States, directly or indirectly, any of the subject merchandise during the POR.'' See Letter from Counsel for Siderca S.A.I.C. to the Secretary, October 7, 1999, p. 2.

On November 8, 1999, the Department requested information from Customs on those entries identified as consumption entries from Argentina in the Census proprietary entry-specific database. In its response of January 12, 2000, Customs provided documentation showing that there was only one entry subject to the antidumping case on OCTG from Argentina. The remaining entries covered shipments of mechanical tubing and boiler tubing, merchandise not subject to the antidumping duty order on oil country tubular goods. The one entry for consumption, nonseamless (welded) oil tubing classified under HTSUS 7306.20.60.50, was not produced by Siderca.

Based on the foregoing, there is no evidence that Siderca made any U.S. consumption entries of Argentine OCTG during the POR. The Department, therefore, determines that no subject merchandise produced or exported by Siderca was entered into the United States for consumption during the POR and, thus, there are no entries subject to review.

Because Siderca was the only firm for which a review was requested and it had no U.S. entries for consumption of covered merchandise during the POR, there is no basis for continuing this administrative review. We, therefore, are rescinding this review in accordance with § 351.213(d)(3) of the Department's regulations. The cash deposit rate for all firms will continue to be the rate established in the most recently completed segment of this proceeding (i.e., 1.36 percent).

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213(d)(4).

Dated: February 15, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–4249 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Notice of Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received a request for new shipper review of the antidumping duty order on certain pasta from Turkey. In accordance with our regulations, we are initiating this new shipper review.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Cindy Robinson at (202) 482–4126 or 482–3797, respectively; AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request from a pasta producer and its affiliated exporter in Turkey, Beslen Makarna Gida Sanayi ve Ticaret A.S., and Beslen Pazariarma Gida Sanayi ve Ticaret A.S., respectively (collectively ''Beslen''), to conduct a new shipper review of the antidumping duty order on certain pasta from Turkey, issued July 24, 1996 (61 FR 38545). This request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b).

Initiation of Review

Pursuant to 19 CFR 351.214(b), in its request of January 27, 2000, Beslen certified that it did not export the subject merchandise to the United States during the period of investigation (''POI'') (May 1, 1994 through April 30, 1995) and that it is not now, and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Beslen submitted documentation establishing the date on which its merchandise was first entered for consumption in the United States, the volume of that first shipment and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on certain pasta from Turkey. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. The standard period of review in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month.

Antidumping duty proceeding	Period to be reviewed
Turkey: Certain Pasta, A–489–805: Beslen Makarna Gida Sanayi ve Ticaret A.S.	07/01/99–12/31/99

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the

importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 11, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–4251 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 94–3A007.''

Florida Citrus Exports, L.C.'s original Certificate was issued on February 23, 1995 (60 FR 12735, March 8, 1995), and lastly amended on May 5, 1998 (63 FR 25833, May 11, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Florida Citrus Exports, L.C (''FCE''), c/o Mr. Charles Sanders, Jr., Attorney at Law, 1485 50th Court, Vero Beach, Florida 32966.

Contact: Charles Sanders, Jr., Telephone: (561) 770–4685.

Application No.: 94–3A007.

Date Deemed Submitted: February 8, 2000.

Proposed Amendment: FCE seeks to amend its Certificate to:

(1) Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Harbor Island Citrus, Inc., Vero Beach, FL (Controlling Entity: First Atlantic Citrus, Inc., Vero Beach, FL); Minton Sun, Inc., Ft. Pierce, FL (Controlling Entity: Triple M Investment Company, Ft. Pierce, FL) and Seald Sweet LLC, Vero Beach, FL and

(2) Change the listing of the name of the ''Member'' Florida Fresh Citrus Sales, Inc. to River One International Marketing, Inc to reflect the current name of the corporation.

Dated: February 15, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–4137 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 6, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Alcohol and Other Drug Prevention Models on College Campuses.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 1,600.

Abstract: This program identifies and disseminates information about innovative and effective alcohol and other drug prevention programs at institutions of higher education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax) or via her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–4192 Filed 2–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Partially Closed and Closed Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Mary Ann Wilmer at 202–357–6938 or e-mail *mary_ann_wilmer@ed.gov* by no later than February 23, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATE: March 2–4, 2000.

TIME: *March 2*—Subject Area Committee #1, 1:30–2:30 p.m., (open), 2:30–3:00 p.m. (closed); Achievement Levels Committee, 1:30–3:00 p.m.; Joint Meeting, Subject Area Committee #1 and Achievement Levels Committee, 3:00–3:30 p.m.; *March 3*—Executive Committee, 7:00–7:30 a.m., (open), 7:30–8:00 a.m., (closed); Full Board, 8:15–9:45 a.m., (open); Subject Area Committee #2, 9:45–11:00 a.m., (closed); Reporting and Dissemination Committee, 9:45–11:00 a.m. (open); Design and Methodology Committee, 9:45–11:00 a.m., (open); Full Board 11:15 a.m.–12:00 noon, (open), 12:00–1:15 p.m., (closed); and 1:15–4:00 p.m., (open).

March 4—Nominations Committee, 7:30–8:30 a.m., (open); Full Board, 8:30 a.m.—adjournment, approximately, 12:00 noon, (open).

LOCATION: Sheraton Waikiki Hotel, 225 Kalakaua Avenue, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the national Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contact number RJ9753001.

On Thursday, March 2, there will be meeting of two committees of the Governing Board. Subject Area Committee #1 will meet in partially closed session. From 1:30–3:30 p.m. the Committee will meet in open session to discuss the NAEP Foreign Language framework development project. The Committee will meet in closed session from 2:30–3:00 p.m. to review proposed test items for the Voluntary National Test (VNT) in 4th grade reading. The discussion will reference specific items for the assessment, the disclosure of which might significantly frustrate implementation of the VNT. This meeting must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 553b(c) of Title 5 U.S.C.

The Achievement Levels Committee will meet in open session from 1:30–3:00 p.m. The agenda items for this meeting include discussion of a background paper on standard setting on the Voluntary National Tests; a briefing on the study of the alignment of the achievement level for NAEP with the VNT; and a briefing on the preliminary report on the special study of achievement levels.

Subject Area Committee #1 and the Achievement Levels Committee will meet in joint session from 3:00–3:30 p.m. to discuss the proposed achievement levels descriptions for grade 12 students' performance in foreign language.

On March 3, the Executive Committee will meet in partially closed session. In open session, 7:00–7:20 a.m., the Committee will hear an update on Voluntary National Test activities—the contract, and use of incentives in research studies; NAEP/NAGB reauthorization, incentives for participation in NAEP; and the NCES initiative to coordinate research. The Committee will meet in closed session from 7:30–8:00 a.m. to hear an update on the development of cost estimates for NAEP (RFPs) and other contract initiatives. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an

adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The full Board will convene in open session beginning at 8:15 a.m. In addition to the approval of the agenda and the swearing-in of a new board member, this session includes a report from the Executive Director, and an update on the NAEP project.

Subject Area Committee #2 will meet in closed session from 9:45–11:00 a.m. From 9:45–10:30 a.m., the Committee will discuss the draft RFP for the NAEP 2004 math assessment. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

In closed session, from 10:30–11:00 a.m., Subject Area Committee #2 will discuss proposed test items for the Voluntary National Test (VNT) in 8th grade mathematics. The discussion will reference specific items for the assessment, the disclosure of which might significantly frustrate implementation of the VNT. This meeting must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of 552b(c) of Title 5 U.S.C.

There will be open meetings of the Reporting and Dissemination Committee and the Design and Methodology Committee from 9:45–11:00 a.m. Agenda items for the Reporting and Dissemination Committee include review of plans for the release of NEAP reports; reporting issues for Math 2000; and an update on the development of score reporting materials for the Voluntary National Tests. The Design and Methodology Committee will hear a briefing on plans for replenishing Voluntary National Test items and test forms; and a briefing on analysis options on minimizing non-comparability of trends in State NAEP for science and math.

The full Board will reconvene in partially closed session from 11:15 a.m. to 3:30 p.m. In open session, 11:15 a.m.–12:00 noon, the Board will hear an update on the achievement level reporting process. The Board will then meet in closed session from 12:00–1:15 p.m. to hear a briefing on the NAEP Civics Trend Report 1988–1998. The report will include references to specific items from the assessments that have not been released to the public. This portion of the meeting must be closed because reference may be made to data that may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:15–4:00 p.m. the board will meet in open session. Agenda items for this portion of the meeting include an update and discussion on NAEP/NAGB and VNT reauthorization issues; discussion of issues concerning schools participation in NAEP; an update on the NAEP Foreign Language Framework; and review of the contract with AIR for the Voluntary National Tests.

On Saturday, March 4 the Nominations Committee will meet in open session from 7:30–8:30 a.m. The Committee will discuss and approve the plan for review, rating, and compiling the list of recommended nominees to fill potential Board vacancies; consider the process for soliciting nominations for additional nominees.

Also, on March 4, the full Board will meet in open session from 8:30 a.m. until adjournment, approximately 12:00 noon. The Board will hear a presentation on parents and assessment literacy, and continue discussion on issues concerning schools participation in NAEP. This meeting of the National Assessment Governing Board will conclude with the presentation of committee reports and Board actions.

A summary of the activities of the closed, partially closed sessions, and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–4189 Filed 2–22–00; 8:45 am]

BILLING CODE 4001–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–80–000]

Glacier Gas Company, North American Resources Company, Energy West Resources, Inc; Notice of Application

February 16, 2000.

Take notice that on February 9, 2000, Glacier Gas Company (Glacier), 40 East Broadway, Butte, Montana 59701, North America Resources Company (NARCO), 16 East Granite, Butte, Montana 59701, and Energy West Resources, Inc. (Energy Resources), No. 1, First Ave. South, Great Falls, Montana 59403, filed in Docket No. CP00–80–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon Glaciers existing interstate pipeline facilities by sale to NARCO and Energy Resources. The applicants further request a determination that the facilities will be nonjurisdictional gathering after the transfer. The facilities are located in Wyoming and Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

The applicants seek approval and nonjurisdictional determination to permit: (1) Glacier to abandon its certificate responsibilities; (2) NARCO to acquire and operate on a nonjurisdictional basis Glacier's production and other assets located in the Heart Mountain Field; and (3) Energy Resources to acquire and operate as a nonjurisdictional gathering line (a) Glacier's remaining facilities, (b) additional facilities to be purchased from the Montana Power Company and (c) additional facilities to be constructed by Energy Resources.

Any questions regarding this application should be directed to Douglas M. Canter, Esq., McCarthy, Sweeney & Harkaway, P.C., 1750 Pennsylvania Avenue, NW, Washington, DC 20006 at (202) 393–5710.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 2000, file with the Federal Energy Regulatory Commission (888 First Street, NE, Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with

the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Glacier, NARCO, or Energy Resources to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–4183 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–004]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreements

February 16, 2000.

Take notice that on February 1, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and CXY Energy Marketing (U.S.A.) Inc. (CXY) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and CXY commencing February 1, 2000.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

FR Doc. 00–4188 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–77–000]

Maritimes & Northeast Pipelines L.L.C.; Notice of Application

February 16, 2000.

Take notice that on February 1, 2000. Maritimes & Northwest Pipeline, L.L.C. (Maritimes) tendered for filing in the captioned docket an abbreviated application for certificate of public and necessity (Application) under Section 7(c) of the Natural Gas Act (NGA) and Section 157.7 of the regulation of the Commission, seeking authorization to establish an initial incremental rate for service under Rate Schedule MNLFT on Maritimes' new Bucksport Lateral.

Maritimes states that it will construct the Bucksport Lateral pursuant to its automatic blanket construction certificate authority. The Bucksport Lateral will extend from Maritimes' existing mainline facilities in the Orrington, Maine area to distribution facilities that Bangor Gas Company (Bangor Gas) will be constructing. Pursuant to a firm transportation agreement under Rate Schedule MNLFT, Maritimes has agreed to provide Bangor Gas with 50,000 dekathems per day for firm lateral line service on the Bucksport Lateral, and Bangor Gas has agreed to pay the maximum cost-based initial rate for service on the Bucksport Lateral established in the instant proceeding.

Maritimes requests that the Commission issue a final order by April 1, 2000, approving the initial incremental rate for service on the Bucksport Lateral.

Any person desiring to be heard or to protest said Application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the Application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Maritimes to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–4182 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–14–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 16, 2000.

Take notice that on February 10, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective March 2, 2000:

Substitute Sixth Revised Sheet No. 363
Substitute Fifth Revised Sheet No. 364
Substitute Fourth Revised Sheet No. 365

Northwest states that the purpose of this filing is to respond the Commission's Data Request dated February 8, 2000 in Docket No. GT00–14–000. Northwest states that it has corrected Sheet No. 365 so that the shipper associated with Agreement Nos. 122286 and 122287 is listed as Intermountain Gas Company. Northwest also states that it has corrected a clerical error on Sheet Nos. 363, 364, and 365 so that the ''Issued Date'' listed on those tariff sheets is now correctly shown as February 2, 2000.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed. us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4184 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–009]

Trunkline Gas Company; Notice of Compliance Filing

February 16, 2000.

Take notice that on February 11, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the pro forma tariff sheets listed on Appendices A and B attached to the filing and proposed to be effective on various dates beginning August 1, 1996.

Trunkline states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Opinion No. 441 and Order on Initial Decision, 90 FERC ¶61,017 (January 12, 2000) (Order) in the above-referenced proceeding. Trunkline further states that the revised cost of service and pro forma tariff sheets reflect the findings and conclusions of the Commission's Order.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4187 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–705–011, et al.]

Con Edison Solutions, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 15, 2000.

Take notice that the following filings have been made with the Commission:

1. Con Edison Solutions, Inc. MIECO, Inc.

[Docket Nos. ER97–705–011 and ER98–51–010]

Take notice that on February 8, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

2. Idaho Power Company

[Docket No. ER99–4560–001]

Take notice that on February 10, 2000, Idaho Power Company tendered for filing its compliance filing in the above-captioned docket.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Arco CQC Kiln, Inc.

[Docket No. ER00–443–001]

Take notice that on January 31, 2000, Arco CQC Kiln, Inc. (Arco) filed an amendment to its FERC Electric Tariff, Original Volume No. 1, Original Page No. 1, in compliance with the Commission's directives of December 16, 1999. The amendment (1) limits sales of ancillary services by Arco to those made within the market administered by the California Independent System Operator; (2) redesignates the title of the tariff in accordance with Commission policy; and (3) reflects the date of the Commission's approval in the designation of the tariff. In addition, Arco clarified that Arco does not require the authority to assign transmission rights; and therefore omitted such authority in the amended tariff.

Comment date: February 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. West Penn Power Company

[Docket No. ER00–1127–000]

Take notice that on February 8, 2000, West Penn Power Company (West Penn) filed supplemental information to the electric rate filing for the new Bilateral Wholesale Requirements Contract between West Penn and The

Letterkenny Industrial Development Authority (LIDA), filed January 18, 2000.

Comment date: February 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1149–000]

Take notice that on February 8, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Amendment No. 1 to Supplement No. 69 to submit a complete service agreement to add Engage Energy US, L.P. as a long term firm point-to-point transmission customer to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is January 18, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER00–1257–000]

Take notice that on February 10, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Allegheny Power Service Corporation as agent for this service agreement, with waiver of notice, is requested.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER00–1562–000]

Take notice that on February 9, 2000, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff. Tampa Electric also tendered for filing revised tariff customer index sheets showing the new entries for New Smyrna Beach and a name change for Dynegy Power Marketing, Inc. (Dynegy).

Tampa Electric proposes an effective date of January 24, 2000, for the tendered service agreements and tariff sheets, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on New Smyrna Beach, Dynegy, and the Florida Public Service Commission.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER00–1563–000]

Take notice that on February 9, 2000, the California Independent System Operator Corporation tendered for filing a Scheduling Coordinator Agreement between the ISO and the Public Service Company of Colorado for acceptance by the Commission.

The ISO states that this filing has been served on the Public Service Company of Colorado and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of February 4, 2000.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER00–1564–000]

Take notice that on February 9, 2000, the California Independent System Operator Corporation tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and San Joaquin Cogen Limited for acceptance by the Commission.

The ISO states that this filing has been served on San Joaquin Cogen Limited and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective January 26, 2000.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER00–1583–000]

Take notice that on February 9, 2000, Puget Sound Energy, Inc. (Puget) tendered for filing the 1999–2000 Operating Procedures under the Pacific Northwest Coordination Agreement (PNCA).

Puget states that the 1999–2000 Operating Procedures relate to service under the PNCA. A copy of the filing was served upon the parties to the PNCA.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corporation

[Docket No. ER00–1584–000]

Take notice that on February 9, 2000, Avista Corporation (Avista Corp), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Public Utility District No. 1 of Pend Oreille County which replaces a previously filed unsigned agreement under ER00–0732–00, service agreement no. 17.

Avista Corporation requests waiver of the prior notice requirements and requests the same effective date of November 10, 1999, which was previously approved for the unsigned agreement.

Notice of this filing has been served upon the following: Mr. Dick L. Arkills, Director, Power Supply & Engineering, Pend Oreille PUD, Box Canyon Dam, P O Box 547, Ione, WA 99139.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1585–000]

Take notice that on February 9, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 1 to the Allegheny Power Pro Forma Open Access Transmission Tariff, Second Revised Volume No. 5 which was filed with the Commission on January 27, 2000 and amended on February 2, 2000. The purpose of Supplement No. 1 was to provide a list of the parties to whom the filings of January 27, 2000 and February 2, 2000 have been mailed.

Copies of the filings of January 27, 2000 and February 2, 2000 have been provided to all jurisdictional customers, to the Public Utilities Commission of

Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Rocky Road Power, LLC

[Docket No. ER00–1586–000]

Take notice that on February 9, 2000, Rocky Road Power, LLC (Rocky Road) tendered for filing a proposed Emergency Redispatch Service tariff. The tariff provides for the dispatch of the Rocky Road Facility by Commonwealth Edison Company during emergencies.

Rocky Road requests that the notice requirements set forth in Rule 35.3(a) be waived to the extent required to allow the tariff to become effective as of February 9, 2000.

Comment date: March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–1587–000]

Take notice that on February 10, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a third revision (Revision 3) to Appendix A of the Responsible Participating Transmission Owner Agreement between the ISO and Southern California Edison Company, for acceptance by the Commission. The purpose of Revision 3 is to further amend the list of Existing Rightholders and Existing Contracts to remove agreements with the City of Pasadena (Pasadena) and the Sacramento Municipal Utility District (SMUD).

The ISO states that this filing has been served on the parties named in the official service list for Docket Nos. ER98–1057–000, et al.

The ISO is requesting waiver of the 60-day notice requirement to allow the provisions in Revision 3 that pertain to Pasadena to be made effective on the latter of (1) the date the Commission accepts for filing Amendment No. 2 to the Edison—Pasadena 230 kV Interconnection and Transmission Service Agreement, or (2) the effective date of Pasadena becoming its own Scheduling Coordinator or designating a new Scheduling Coordinator.

The ISO is also requesting waiver of the 60-day prior notice requirement to allow the provisions in Revision 3 that pertain to SMUD to be made effective as of April 1, 1999.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Peco Energy Company

[Docket No. ER00–1588–000]

Take notice that on February 10, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 et seq., an Agreement dated October 5, 1998 with TXU Electric Company (TXU) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 10, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to TXU Electric Company and to the Pennsylvania Public Utility Commission.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER00–1589–000]

Take notice that on February 10, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Sierra Pacific Energy Co.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective January 12, 2000.

A copy of this filing was caused to be served upon Sierra Pacific Energy Co., as noted in the filing letter.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New York State Electric & Gas Corporation

[Docket No. ER00–1591–000]

Take notice that on February 10, 2000 New York State Electric & Gas Corporation (NYSEG), tendered for filing amendments to NYSEG's FERC Rate Schedules 26 and 87 filed with FERC corresponding to transmission agreements between NYSEG and Central Hudson Gas & Electric Corporation (Central Hudson) and NYSEG and Consolidated Edison Company of New York, Inc. (Con Edison), respectively. The filing consists of the restated amendments which correct amendments filed on July 9, 1999 (the July 9 Filing) by the Member Systems of the New York Power Pool in compliance with the Commission's January 27, 1999 Order in the captioned dockets.

NYSEG requests that the effective date of these amendments be made retroactive to November 18, 1999, the implementation date of the New York Independent System Operator.

Copies of this filing have been served upon Central Hudson, Con Edison, and the Public Service Commission of the State of New York.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Company

[Docket No. ER00–1592–000]

Take notice that on February 10, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Arizona Public Service.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective January 12, 2000.

A copy of this filing was caused to be served upon Arizona Public Service, as noted in the filing letter.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Power, a division of Duke Energy Corporation

[Docket No. ER00–1593–000]

Take notice that on February 10, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Alliant Energy Corporate Services, Inc., for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on January 31, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Dighton Power Associates Limited Partnership, Dartmouth Power Associates Limited Partnership

[Docket Nos. ER00–1594–000 and ER00–1595–000]

Take notice that on February 8, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Potomac Electric Power Company

[Docket No. ER00–1600–000]

Take notice that on February 3, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Williams Energy Marketing & Trading Company.

An effective date of January 26, 2000 for these service agreements, with waiver of notice, is requested.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER00–1601–000]

Take notice that on February 10, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Non-Firm Point-To-Point Transmission Service to PG&E Energy Trading-Power, L.P., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to PG&E Energy Trading-Power, L.P.

NUSCO requests that the Service Agreement become effective March 10, 2000.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Indiana Gas and Electric Company

[Docket No. ER00–1602–000]

Take notice that on February 10, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with British Columbia Power Exchange Corporation (Powerex).

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER00–1603–000]

Take notice that PacifiCorp on February 10, 2000, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Short-term Firm Transmission Service Agreement with Coral Power, L.L.C. (Coral), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER00–1604–000]

Take Notice that on February 10, 2000, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated January 21, 2000, with Merrill Lynch Capital Services, Inc. (MLCS), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds MLCS as an eligible customer under the Tariff.

PP&L requests an effective date of February 10, 2000, for the Service Agreement.

PP&L states that copies of this filing have been supplied to MLCS and to the Pennsylvania Public Utility Commission.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER00–1605–000]

Take notice that on February 10, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to PG&E Energy Trading-Power, L.P., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to PG&E Energy Trading-Power, L.P.

NUSCO requests that the Service Agreement become effective March 10, 2000.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER00–1606–000]

Take notice that on February 11, 2000, Arizona Public Service Company (APS), tendered for filing revisions to Service Schedules A and B to its Electric Coordination Tariff, FERC Electric Tariff Volume No. 1.

A copy of this filing has been served on all parties on the Service List.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1610–000]

Take notice that on February 11, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 24 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 27, 2000 to Cleco Marketing & Trading LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1611–000]

Take notice that on February 11, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered Supplement No. 71 to add Sempra Energy Trading Corp., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is February 10, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Tucson Electric Power Company

[Docket No. ER00–1612–000]

Take notice that on February 10, 2000, Tucson Electric Power Company (Tucson), tendered for filing an Umbrella Service Agreement between Tucson and Phelps Dodge Energy Services, L.L.C., for short-term power sales under Tucson's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company

[Docket No. ER00–1613–000]

Take notice that on February 11, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Service Agreement, establishing Peoples Energy Services Corporation, as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd also submits for filing a revised Index of Customers reflecting name changes for current customers: First Energy Trading and Power Marketing, Inc., renamed FirstEnergy Trading Services, Inc.; Electric Clearinghouse, Inc., renamed Dynegy Power Marketing, Inc.; El Paso Power Services Company and Sonat Power Marketing Company L.P., consolidated and renamed El Paso Merchant Energy, L.P.; and Illinova Power Marketing, Inc., renamed Illinova Energy Partners.

ComEd requests an effective date of January 28, 2000, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon PESC, FET, DYN, EPME, and IEP.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4209 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–45–000]

Eastern Shore Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed 2000 System Expansion Project; Request for Comments on Environmental Issues and Notice of Site Visit

February 16, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of 2000 System Expansion Project involving construction and operation of facilities proposed by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania, Cecil County, Maryland, and New Castle and Kent Counties, Delaware.[1] Eastern Shore would construct: 2.1 miles of 16-inch-diameter pipeline loop; 10.1 miles of new 6-inch-diameter pipeline; five delivery points; and minor auxiliary piping and valves at its existing Daleville Compressor Station. Eastern Shore would also abandon 1 mile on 2-inch-diameter pipeline and replace it with 4-inch-diameter pipeline. The facilities would provide additional natural gas delivery capacity to serve increased demands from Eastern Shore's three local distribution companies. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you should have been contacted by the pipeline company about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, it easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet prepared by the FERC entitled'' An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' was attached to the project notice Eastern Shore provided to landowners along and adjacent to the proposed route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Eastern Shore want to construct the 2000 Expansion Project to expand the capacity of certain of its facilities in Delaware, Pennsylvania, and Maryland to transport an additional 14,130 decatherms per day of natural gas to three local distribution.

The general location of the proposed project facilities is shown in appendix 1, figure 1.[2]

Eastern Shore seeks authority to

- construct and operate 2.1-miles of 16-inch-diameter pipeline loop adjacent to an existing pipeline on its existing right-of-way in Chester County, Pennsylvania (appendix 1, figure 2);
- abandon one mile of two-inch diameter lateral pipeline and replace it with 4-inch-diameter pipeline in New Castle County, Delaware, and Cecil County, Maryland on existing right-of-way (figure 3); and
- construct and operate 10.1 miles of 6-inch-diameter new mainline and 5 new delivery points (meter and regulator stations) in Kent County, Delaware, primarily on or adjacent to Norfolk Southern Railroad and Delaware Department of Transportation (DelDOT) rights-of-way (figure 4).

Land Requirements for Construction

Construction of the proposed facilities would require about 72 acres of land. Following construction, the land disturbed by construction activities

[1] Eastern Shore's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

would be restored and allowed to revert to its former use except for 1.53 acres which would be maintained as new aboveground facility sites (the five delivery points). Project construction would generally follow existing utility easement (Eastern Shore, DelDOT, and Norfolk Southern rights-of-way).

During construction 45 acres of temporary easement and 27 acres of permanent pipeline easement would be required. Of the 27 acres of permanent easement, 14.5 acres would be newly acquired (for the 10.1 miles of new mainline in Kent County, Delaware). The shorter pipeline loop and lateral replacement project segments would remain on existing Eastern Shore pipeline easements and would require no more permanent right-of-way beyond the existing 12.5 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- Nineteen single family homes and one apartment complex are located within 50 feet of the project.
- Two federally listed endangered or threatened species and four state species of concern may occur in the proposed project area.
- A stream which would be crossed 3 times by project construction is under consideration by the National Park Service for Wild and Scenic River designation.
- On February 11, 2000, Eastern Shore filed a route variation which avoids a land parcel on which a cemetery maintained by the Old Fellows is located. The route variation is at approximately mile post 8.5 in Milford, Delaware. We would evaluate the reasonableness of this alternative.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [Locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2.
- Reference Docket No. CP00–45–000.
- Mail your comments so that they will be received in Washington, DC on or before March 17, 2000.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you may be removed from the environmental mailing list.

On February 23, 2000, the Office of Energy Projects staff will conduct a precertification site visit of the project route and possible alternative routes. All parties may attend. Those planning to attend must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''Intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access

to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–4181 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 16, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2210–044.

c. *Date Filed:* February 1, 2000.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain.

f. *Location:* The Smith Mountain Project is located on the Roanoke River in Bedford, Campbell, Franklin, Pittsylvania, and Roanoke Counties, Virginia. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373 telephone (614) 223–2918.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at *Jon.Cofrancesco@ferc.fed.us* or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* March 21, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2210–00) on any comments or motions filed.

k. *Description of Project:* Appalachian Power Company, licensee for the Smith Mountain Project, requests approval to grant permission to Magnum Point Marina, to install and operate two floating boat docks with a total of 26 slips within the boundary of the Smith Mountain Project. The proposed docks would be located along the Blackwater River portion of Smith Mountain Lake and added to the marina's existing facilities which include three boat docks with a total of 16 slips, a boat launching ramp, a maintenance building, a store, sanitary facilities, and paved parking. The installation of the proposed dock may require the dredging of approximately 926 cubic yards of material within the reservoir.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–4185 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2631–007–MA]

International Paper Company; Notice Establishing Subsequent Licensing Procedural Schedule and a Deadline for Submission of Final Amendments

February 16, 2000.

The license for the Woronoco Hydroelectric Project, FERC Project No. 2631, located on the Westfield River, in Hampden County, Massachusetts, expires on September 1, 2001. An application for a new license has been filed as follows:

Project No.	Applicant	Contact
P–2631–007	International Paper Company	Ted Lewellyn, International Paper Co., Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337
	.....	Michael K. Chapman, International Paper Co., 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888
	.....	Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, MA 04967, (207) 487–3328

The following is an approximate procedural schedule that will be followed in processing the applications:

Date	Action
November 30, 1999.	Commission notifies applicant that its application is deficient, if applicable.
December 15, 1999.	Commission notifies applicant that its application has been accepted, and issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
June 22, 2000	*Commission's deadline for applicant to file final amendment, if any, to its application.*
June 22, 2000	*Commission's deadline for applicant to file its response to the Commission's additional information request.*
July 7, 2000 ...	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipts of all additional information and the information filed in response to the public notice of the acceptance of the applications, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Allan Creamer at (202) 219–0365.

David P. Boergers,

Secretary.

[FR Doc. 00–4186 Filed 2–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 16, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 23, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note—Items listed on the agenda may be deleted without further notice.**

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro; 735th Meeting—February 23, 2000; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET # P–1388,008, SOUTHERN CALIFORNIA EDISON COMPANY
CAH–2.
DOCKET # P–1389,005, SOUTHERN CALIFORNIA EDISON COMPANY
CAH–3.
DOCKET # P–10536,006, PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON
OTHER #S P–10536, 005, PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON
CAH–4.
DOCKET # P–2058,014, AVISTA CORPORATION

Consent Agenda—Electric

CAE–1.
DOCKET # ER00–902,000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–2.
DOCKET # ER00–939,000, LAKE WORTH GENERATION L.L.C.
OTHER #S ER00–1049,000, CALCASIEU POWER, LLC
ER00–1115,000, CALPINE CONSTRUCTION FINANCE COMPANY, L.P.
CAE–3.
DOCKET # ER00–901,000, ARIZONA PUBLIC SERVICE COMPANY
CAE–4.
DOCKET # ER00–800,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER #S ER00–900,000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–5.
DOCKET # ER00–982,000, CENTRAL MAINE POWER COMPANY
OTHER #S EL00–44,000, CENTRAL MAINE POWER COMPANY
ER99–4534,000, CENTRAL MAINE POWER COMPANY
ER99–238,000, CENTRAL MAINE POWER COMPANY
ER00–604,000, CENTRAL MAINE POWER COMPANY
ER00–26,000, CENTRAL MAINE POWER COMPANY
CAE–6.
DOCKET # ER00–330,000, CONNECTICUT LIGHT & POWER COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY
CAE–7.
DOCKET # ER00–980,000, BANGOR HYDRO-ELECTRIC COMPANY
CAE–8.
DOCKET # ER00–984,000, NEW ENGLAND POWER POOL
OTHER #S ER00–985,000, NEW ENGLAND POWER POOL
CAE–9.
DOCKET#ER00–971,000, ISO NEW ENGLAND INC.
OTHER#SER00–996,000, ISO NEW ENGLAND INC.
ER00–1035,000, NEW ENGLAND POWER POOL
CAE–10.
DOCKET#ER00–989,000, AEP OPERATING COMPANIES AND CSW OPERATING COMPANIES
CAE–11.
DOCKET#ER00–1014,000, PP&L, INC.
CAE–12.
DOCKET#ER00–951,000, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–13.
DOCKET#ER00–1036,000, DPL ENERGY, INC.
CAE–14.
DOCKET#OA97–122,000, ALLEGHENY POWER SERVICE COMPANY
OTHER#SOA96–28,002, PACIFIC GAS AND ELECTRIC COMPANY
OA96–64,001, DAYTON POWER & LIGHT COMPANY
OA96–73,001, FLORIDA POWER CORPORATION
OA96–75,000, BLACK HILLS POWER & LIGHT COMPANY
OA96–78,000, DETROIT EDISON COMPANY
OA96–122,001, MAINE PUBLIC SERVICE COMPANY
OA96–122,002, MAINE PUBLIC SERVICE COMPANY
OA96–122,003, MAINE PUBLIC SERVICE COMPANY
OA96–124,000, CENTRAL MAINE POWER COMPANY
OA96–126,000, OHIO VALLEY ELECTRIC CORPORATION
OA96–138,002, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA96–153,003, ARIZONA PUBLIC SERVICE COMPANY
OA96–158,001, ENTERGY SERVICES, INC.
OA96–158,002, ENTERGY SERVICES, INC.
OA96–163,002, LOCKHART POWER COMPANY
OA96–184,001, CITIZENS UTILITIES COMPANY
OA96–198,003, CAROLINA POWER & LIGHT COMPANY
OA96–203,001, WESTERN RESOURCES, INC.
OA96–210,002, ORANGE AND ROCKLAND UTILITIES, INC.
OA96–227,000, BALTIMORE GAS & ELECTRIC COMPANY
OA97–7,000, VERMONT ELECTRIC POWER COMPANY
OA97–20,000, WASHINGTON WATER POWER COMPANY
OA97–21,000, WASHINGTON WATER POWER COMPANY
OA97–111,000, CINERGY SERVICES, INC.
OA97–112,000, CINERGY SERVICES, INC.
OA97–124,000, CINERGY SERVICES, INC.
OA97–131,000, DAYTON POWER & LIGHT COMPANY
OA97–132,000, DAYTON POWER & LIGHT COMPANY

OA97–133,000, DAYTON POWER & LIGHT COMPANY
OA97–134,000, DAYTON POWER & LIGHT COMPANY
OA97–138,000, DAYTON POWER & LIGHT COMPANY
OA97–140,000, SEMINOLE ELECTRIC COOPERATIVE, INC.
OA97–141,000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OA97–142,000, DAYTON POWER & LIGHT COMPANY
OA97–190,000, WISCONSIN POWER AND LIGHT COMPANY
OA97–194,000, MINNESOTA POWER & LIGHT COMPANY
OA97–195,000, DUQUESNE LIGHT COMPANY
OA97–211,000, MID CONTINENT AREA POOL
OA97–215,000, SOUTHERN COMPANY SERVICES, INC.
OA97–221,000, DUQUESNE LIGHT COMPANY
OA97–245,000, FLORIDA POWER & LIGHT COMPANY
OA97–250,000, PORTLAND GENERAL ELECTRIC COMPANY
OA97–259,000, CONSUMERS ENERGY COMPANY
OA97–263,000, CENTRAL POWER & LIGHT COMPANY
OA97–266,000, CENTRAL MAINE POWER COMPANY
OA97–270,000, ENTERGY SERVICES, INC.
OA97–274,000, DAYTON POWER & LIGHT COMPANY
OA97–282,000, CENTRAL LOUISIANA ELECTRIC COMPANY
OA97–288,000, CENTRAL POWER & LIGHT COMPANY
OA97–300,000, NORTHEAST UTILITIES SERVICE COMPANY
OA97–307,000, MONTANA POWER COMPANY
OA97–324,000, CENTRAL LOUISIANA ELECTRIC COMPANY
OA97–325,000, CENTRAL LOUISIANA ELECTRIC COMPANY
OA97–326,000, CENTRAL LOUISIANA ELECTRIC COMPANY
OA97–327,000, ENTERGY SERVICES, INC.
OA97–328,000, ENTERGY SERVICES, INC.
OA97–329,000, ENTERGY SERVICES, INC.
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OA97–354,000, ENTERGY SERVICES, INC.
OA97–362,000, FLORIDA POWER CORPORATION
OA97–389,000, FLORIDA POWER CORPORATION
OA97–405,000, PACIFICORP
OA97–409,000, WISCONSIN POWER & LIGHT COMPANY
OA97–491,000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OA97–508,000, CENTRAL VERMONT PUBLIC SERVICE COMPANY
OA97–509,000, NEVADA POWER COMPANY
OA97–528,000, ENTERGY SERVICES, INC.
OA97–555,000, ENTERGY SERVICES, INC.
OA97–563,000, NORTHEAST UTILITIES SERVICE COMPANY
OA97–570,000, ENTERGY SERVICES, INC.
OA97–571,000, NEW ENGLAND POWER POOL
OA97–574,000, ENTERGY SERVICES, INC.
OA97–614,000, ENTERGY SERVICES, INC.
OA97–619,000, PACIFIC GAS AND ELECTRIC COMPANY
OA97–625,000, ENTERGY SERVICES, INC.
OA97–626,000, WESTERN RESOURCES, INC.
OA97–627,000, ENTERGY SERVICES, INC.
OA97–632,000, ENTERGY SERVICES, INC.
OA97–633,000, INTERSTATE POWER COMPANY
OA97–643,000, CITIZENS UTILITIES COMPANY
OA97–646,000, ENTERGY SERVICES, INC.
OA97–657,000, ENTERGY SERVICES, INC.
OA97–668,000, CENTRAL POWER & LIGHT COMPANY
OA97–674,000, BOSTON EDISON COMPANY
OA97–677,000, FLORIDA POWER CORPORATION
OA97–681,000, DETROIT EDISON COMPANY
OA97–686,000, EL PASO ELECTRIC COMPANY
OA97–687,000, NORTHEAST UTILITIES SERVICE COMPANY
OA97–688,000, PENNSYLVANIA POWER & LIGHT COMPANY
OA97–699,000, FLORIDA POWER & LIGHT COMPANY
OA97–703,000, BLACK HILLS POWER & LIGHT COMPANY
OA97–706,000, CENTRAL VERMONT PUBLIC SERVICE COMPANY
OA97–708,000, ORANGE & ROCKLAND UTILITIES, INC.
OA97–712,000, ALLEGHENY POWER SERVICE COMPANY
ER97–3189,009, ATLANTIC CITY ELECTRIC COMPANY
ER97–3189,013, ATLANTIC CITY ELECTRIC COMPANY

CAE–15.
DOCKET#ER00–1026,000, INDIANAPOLIS POWER & LIGHT COMPANY

CAE–16.
DOCKET#ER00–936,000, SOUTHERN ENERGY DELTA, L.L.C.
OTHER#SER00–937,000, SOUTHERN ENERGY POTRERO, L.L.C.

CAE–17.
DOCKET#ER00–934,000, NEW ENGLAND POWER POOL

CAE–18.
DOCKET#ER99–4415,002, ILLINOIS POWER COMPANY
OTHER#SER99–4530,002, ILLINOIS POWER COMPANY
EL00–7,002, ILLINOIS POWER COMPANY

CAE–19.
OMITTED

CAE–20.
DOCKET#ER98–992,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#SER98–996,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1002,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1310,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1910,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1912,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1930,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1931,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1933,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1935,000, CALIFORNIA INDEPENDENT SYSTEMOPERATOR CORPORATION
ER98–2115,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–21.
DOCKET# ER98–1499,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–1500,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1501,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1502,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1503,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2113,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2291,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2292,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2294,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2295,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2647,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2648,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2650,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

ER98–2947,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2949,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2978,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–3017,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–3020,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–3022,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–22.
DOCKET# ER99–1331,000, ILLINOIS POWER COMPANY

CAE–23.
DOCKET# ER99–1378,000, ALLIANT ENERGY CORPORATE SERVICES, INC.

CAE–24.
DOCKET# EL99–10,002, EL PASO ELECTRIC COMPANY

CAE–25.
DOCKET# ER99–723,002, FLORIDA POWER & LIGHT COMPANY
OTHER#S ER99–723,000, FLORIDA POWER & LIGHT COMPANY

CAE–26.
DOCKET# EC96–19,052, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S EC96–19,014, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EC96–19,015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EC96–19,018, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663,015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663,016, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663,019, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663,055, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–3760,004, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–27.
DOCKET# EC00–31,000, PP&L RESOURCES, INC., CEP GROUP, INC., PP&L GLOBAL, INC., PP&L GENERATION HOLDINGS, LLC AND PPL GENERATION, LLC
OTHER#S EC00–32,000, PP&L RESOURCES, INC., CEP GROUP, INC., PP&L, INC., PP&L ENERGYPLUS CO., LLC, PPL GENERATION, LLC, PPL MARTINS CREEK, LLC, PPL MONTOUR, LLC, PPL BRUNNER ISLAND, LLC, PPL HOLTWOOD, LLC AND PPL SUSQUEHANNA, LLC

CAE–28.
DOCKET# ER00–553,001, CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S ER00–618,001, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–29.
DOCKET# ER00–604,001, CENTRAL MAINE POWER COMPANY
OTHER#S ER00–604,002, CENTRAL MAINE POWER COMPANY

CAE–30.
DOCKET# ER99–25,001, PECO ENERGY COMPANY

CAE–31.
DOCKET# ER99–307,001, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY

CAE–32.
DOCKET# TX93–2,008, CITY OF BEDFORD, CITY OF DANVILLE, CITY OF MARTINSVILLE AND TOWN OF RICHLANDS, VIRGINIA AND BLUE RIDGE POWER AGENCY
OTHER#S EL94–59,004, CITY OF BEDFORD, CITY OF DANVILLE, CITY OF MARTINSVILLE AND TOWN OF RICHLANDS, VIRGINIA AND BLUE RIDGE POWER AGENCY V. APPALACHIAN POWER COMPANY

CAE–33.
DOCKET# EL99–57,001, ENTERGY SERVICES, INC.

CAE–34.
DOCKET# ER99–3248,002, CONSOLIDATED EDISON ENERGY MASSACHUSETTS, INC.

CAE–35.
DOCKET# ER99–4514,001, NIAGARA MOHAWK POWER CORPORATION

CAE–36.
OMITTED

CAE–37.
OMITTED

CAE–38.
DOCKET# EL00–12,000, TENNESSEE POWER COMPANY

CAE–39.
DOCKET# EG00–64,000, KILLINGHOLME GENERATION LIMITED

CAE–40.
OMITTED

CAE–41.
DOCKET# OA00–4,000, INDIANAPOLIS POWER AND LIGHT COMPANY

CAE–42.
DOCKET# ER00–865,000, CONSOLIDATED EDISON ENERGY, INC.

CAE–43.
DOCKET# ER00–514,000, SELECT ENERGY, INC.
OTHER#S ER00–952,000, SELECT ENERGY, INC.
ER00–963,000 CONNECTICUT LIGHT AND POWER COMPANY

CAE–44.
DOCKET# EL98–36,000, AQUILA POWER CORPORATION V. ENTERGY SERVICES, INC., ENTERGY ARKANSAS, INC., ENTERGY LOUISIANA, INC., ENTERGY MISSISSIPPI, INC., ENTERGY NEW ORLEANS, INC. AND ENTERGY GULF STATES, INC.

Consent Agenda—Gas and Oil

CAG–1.
OMITTED

CAG–2.
DOCKET# RP00–169,000, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–3.
DOCKET# RP00–173,000, ANR PIPELINE COMPANY

CAG–4.
DOCKET# RP00–170,000, COLUMBIA GAS TRANSMISSION CORPORATION

CAG–5.
DOCKET# RP00–171,000, COLUMBIA GULF TRANSMISSION COMPANY
OTHER# RP00–171,001, COLUMBIA GULF TRANSMISSION COMPANY

CAG–6.
OMITTED

CAG–7.
DOCKET# PR00–1,000, ONEOK FIELD SERVICES COMPANY

CAG–8.
DOCKET# RP96–272,013, NORTHERN NATURAL GAS COMPANY

CAG–9.
DOCKET# RP99–324,000, KOCH GATEWAY PIPELINE COMPANY

CAG–10.
DOCKET# RP99–381,001, WYOMING INTERSTATE COMPANY, LTD.

CAG–11.
DOCKET# RP96–320,026, KOCH GATEWAY PIPELINE COMPANY

CAG–12.
DOCKET# TM99–6–29,000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–13.
DOCKET# PR99–13,000, GULF STATES PIPELINE CORPORATION
OTHER#S PR99–13,001 GULF STATES PIPELINE CORPORATION

CAG–14.
DOCKET# RP98–40,022, PANHANDLE EASTERN PIPE LINE COMPANY

CAG–15.
DOCKET# RP97–71,018, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP95–197,039, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–16.
DOCKET# RP99–507,000, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
OTHER#S RP00–139,000, K N MARKETING, L.P. V. EL PASO NATURAL GAS COMPANY

CAG–17.
DOCKET# RP97–57,004, NORAM GAS TRANSMISSION COMPANY

CAG–18.
DOCKET# MG00–3,000, FLORIDA GAS TRANSMISSION COMPANY
OTHER#S MG00–4,000, NORTHERN NATURAL GAS COMPANY
MG00–5,000 NORTHERN BORDER PIPELINE COMPANY

CAG–19.
DOCKET# CP00–24,000, SABINE PIPE LINE COMPANY
OTHER#S CP00–25,000, SABINE PIPE LINE LLC

CAG–20.

DOCKET# CP00–31,000, SHENANDOAH GAS COMPANY AND WASHINGTON GAS LIGHT COMPANY
CAG–21.
DOCKET# CP99–241,000, ANR PIPELINE COMPANY
OTHER#S CP99–241,001, ANR PIPELINE COMPANY
CAG–22.
DOCKET# CP99–541,000, COTTON VALLEY COMPRESSION, L.L.C.
OTHER#S CP99–542,000, COTTON VALLEY COMPRESSION, L.L.C.
CP99–543,000 COTTON VALLEY COMPRESSION, L.L.C.
CAG–23.
DOCKET# CP99–610,000, NATURAL GAS PROCESSING COMPANY
CAG–24.
DOCKET# CP99–94,000, FLORIDA GAS TRANSMISSION COMPANY
OTHER#S RP96–366,011, FLORIDA GAS TRANSMISSION COMPANY
CP99–94 001 FLORIDA GAS TRANSMISSION COMPANY
CAG–25.
DOCKET# CP99–616,000, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S CP99–617,000, GATHERCO, INC.
CAG–26.
DOCKET# CP96–152,025, KANSAS PIPELINE COMPANY
CAG–27.
OMITTED
CAG–28.
DOCKET# RM98–9,002, REVISION OF EXISTING REGULATIONS UNDER PART 157 AND RELATED SECTIONS OF THE COMMISSION'S REGULATIONS UNDER THE NATURAL GAS ACT

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
DOCKET# RM99–2,001, REGIONAL TRANSMISSION ORGANIZATIONS
Order on Rehearing.
E–2.
DOCKET# ER00–448,000, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.
OTHER#S EL00–25,000, COMMONWEALTH EDISON COMPANY, COMMONWEALTH EDISON COMPANY OF INDIANA, INC. IES UTILITIES INC. INTERSTATE POWER COMPANY AND MIDAMERICAN ENERGY COMPANY
Order on petition for declaratory order and amendment.
E–3.
DOCKET# EC98–40,000, AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTH WEST CORPORATION
OTHER# ER98–2,770,000, AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTH WEST CORPORATION
ER98–2,786,000 AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTH WEST CORPORATION
Opinion and order on merger.
E–4.
DOCKET# RM95–9,003, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
Order on Final Rule.

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 00–4313 Filed 2–17–00; 4:38 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00286; FRL–6488–1]

TSCA Sections 402/404 Training, Certification, Accreditation, and Standards for Lead-Based Paint Activities; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Sections 402/404 Training, Certification, Accreditation, and Standards for Lead-Based Paint Activities (EPA ICR No. 1715.03, OMB No. 2070–0155). This ICR involves a collection activity that is currently approved and scheduled to expire on May 31, 2000. The information collected under this ICR will help EPA ensure that individuals engaged in lead-based paint activities (i.e., activities that prevent, detect or eliminate hazards associated with lead-based paint) are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; that activities are conducted according to reliable, effective and safe work practice standards; and that States and Indian Tribes that seek Federal authorization to administer and enforce lead-based paint activities establish programs that address the above requirements. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00286 and administrative record number AR–222, must be received on or before April 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00286 and administrative record number AR–222 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ellie Clark, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3402; fax number: (202) 260–0018; e-mail address: clark.ellie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you provide training in lead-based paint activities, are engaged in lead-based paint activities, or are a State Agency administering lead-based paint activities. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
General contractors - Single family homes	1521
General contractors - Residential buildings, other than single family	1522
Operative builders	1531
Other nonresidential buildings	1542
Painting contractors	1721

Type of business	SIC codes
Plastering, dry wall, acoustical, insulation work	1742
Carpentry work contractors	1751
Roofing, siding, sheet metal work	1761
Wrecking and demolition	1795
Miscellaneous trade contractors, NEC	1799
Schools: Industrial, technical and trade vocational schools, NEC	8249
Vocational guidance training programs and services	8299

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select items 4078 and 4079 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00286 and administrative record number AR–222. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00286 and administrative record number AR–222 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00286 and administrative record number AR–222. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: TSCA Sections 402/404 Training, Certification, Accreditation, and Standards for Lead-Based Paint Activities.

ICR numbers: EPA ICR No. 1715.03, OMB No. 2070–0155.

ICR status: This ICR is currently scheduled to expire on May 31, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection applies to reporting and recordkeeping requirements found in sections 402 and 404 of the Toxic Substances Control Act (TSCA) and applicable regulations at 40 CFR part 745. The purposes of the requirements under TSCA section 402 are to ensure that individuals conducting activities that prevent, detect, and eliminate hazards associated with lead-based paint in residential facilities, particularly those occupied or used by children, are properly trained and certified, that training programs providing instruction in such activities are accredited, and that these activities are conducted according to reliable, effective, and safe work practice standards. The TSCA section 404 regulations include reporting and recordkeeping requirements that apply to States and Indian Tribes that seek Federal authorization to administer and enforce State and Tribal programs that regulate lead-based paint activities based on the section 402 regulations. The overall goals of the section 402 and section 404 regulations and the reporting and recordkeeping requirements found therein are to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards in residences, and to protect the general public from exposure to lead hazards.

Responses to the collection of information are mandatory (see 40 CFR part 745). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 17.2 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Persons who provide training in lead-based paint activities or engage in lead-based paint activities; or a State Agency administering lead-based paint activities.

Estimated total number of potential respondents: 21,529.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1 or more, depending on type of respondent.

Estimated total annual burden hours: 371,214.

Estimated total annual burden costs: $12,040,927.

VI. Are There Changes in the Estimates from the Last Approval?

Compared with the information collection most recently approved by OMB, there is a net decrease of 32,327 hours in the estimated burden to respondents, from an estimated annual total burden of 403,541 hours currently approved to an average annual total burden of 371,214 hours in this request. This decrease reflects a number of factors. The initial ICR was developed before any of the applicable program activities were underway and relied on burden estimates developed in the TSCA sections 402/404 Regulatory Impact Analysis and experience with other similar rules. Better estimates are now available on the likely burden to States and EPA under this rule. In addition, a more accurate estimate of the number of States that will obtain authorization to run their own programs is available; the initial ICR assumed all States would seek authorization. The third change is an update in wage rates to reflect current economic conditions. Finally, this ICR includes the costs and burden to the States for administering their programs.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–4240 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00288; FRL–6491–2]

Childhood Blood-Lead Screening and Lead Awareness (Educational) Outreach for Indian Tribes; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting pre-application grant proposals from Indian Tribes to conduct blood-lead screening for tribal children, and for conducting lead awareness (educational) outreach activities for Indian Tribes. EPA is awarding grants which will provide approximately $2 million for Indian Tribes to perform those activities and to encourage Indian Tribes to consider continuing such activities in the future. Decisions on awarding the grant funds will be made based on the evaluation of the pre-application proposals. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

DATES: All pre-applications must be received on or before May 23, 2000.

ADDRESSES: Submit pre-application proposals to: Darlene Watford, Technical Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Watford, Technical Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3989; fax number: (202) 260–0001; and e-mail address: watford.darlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to Federally recognized Indian Tribes or Tribal consortiums only. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. Scope and Purpose

The purpose of these grants is to encourage Indian Tribes to recognize the risks to children associated with lead exposure and address them by conducting blood-lead screening for tribal children and providing lead awareness activities to Indian Tribes. A recent study by the National Health and Nutrition Examination Survey (NHANES) indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning, and have elevated blood-lead levels.

III. Eligibility

Eligible recipients are Federally recognized Indian Tribes or Tribal consortiums only. For the purposes of this notice, an association or partnership with one or more Federally recognized Indian Tribes is considered a consortium. Federally recognized Indian Tribes are listed in the **Federal Register** of December 30, 1998 (63 FR 71941). In addition, the following conditions apply:

A. General Requirements

1. There are no requirements for matching funding under this grant program.

2. No applicant may receive two grants for the same project at one time. If an Indian Tribe submits two applications, one must be for a blood-screening project and one for an educational outreach project.

3. Applicants must identify in the application any funds from other sources (private or public) that may be used to carry-out their proposed grant projects (in response to this notice). If the applicant has conducted, or is currently working on a related project(s), please provide a brief description of those projects and funding sources in the application.

4. Applicants must use Clinical Laboratory Improvement Amendments (CLIA)-certified laboratories for off-site analysis. These laboratories must participate in the Wisconsin State Laboratory of Hygiene Blood-Lead Proficiency Testing Program with a score of 80% (4 out of 5) acceptable results in a monthly testing event. Applicants may use on-site, hand-held, blood-lead analyzers; however, the applicant must successfully participate in at least one round of the blood-lead proficiency testing program administered by the Wisconsin State Laboratory of Hygiene for these devices.

5. Applicants submitting blood-lead screening proposals must follow the format provided in the ''QAPP Template for Blood-Lead Screening for Indian Tribes,'' document prepared by EPA exclusively for Indian Tribes to respond to this notice.

6. EPA is extremely interested in knowing what steps the applicant plans to follow regarding treatment for children whose blood-lead levels are determined to be elevated (<10 μg/dL (micrograms per deciliter)) while screening under this grant. It is important that the children who are found to have elevated blood-lead levels are not left untreated. Specific steps and related information must be included in section B of the Work Plan for blood-lead screening proposals.

B. Administrative Reporting Requirements

The applicant must provide EPA with the original plus three copies of the:

1. Quarterly progress report, due at the end of each quarter. The report must include:

i. Blood-lead sample collection data, such as Indian Tribe names and locations, ages of children (in months), gender, date of sample collection, method of sample collection (capillary or venous), name and address of the laboratory performing the analysis, laboratory analysis method and date, and blood-lead level.

ii. Lead awareness (educational) outreach activities such as the number of families educated about the dangers of lead exposure, the type, location, and number of educational materials distributed per Indian tribal area. The final progress report should include complete information on those items (including any barriers encountered) to serve as an evaluation of the effectiveness of the grant.

2. Financial status report, due at the end of the grant period.

IV. Authority

The Toxic Substances Control Act (TSCA), section 10, Research, Development, Collection, Dissemination, and Utilization of Data, authorizes EPA to award grants for the purpose of conducting research, development, and monitoring as necessary, ''Provided that, notwithstanding any other provisions of law, beginning in FY 2000 [October 1, 1999] and thereafter, grants awarded under Section 10 of TSCA, as amended, shall be available for research,

development, monitoring, public education, training, demonstrations, and studies.''

V. Activities to be Funded

EPA will provide financial assistance in the form of grants to Indian Tribes or Tribal consortiums to:

A. Conduct Lead Poisoning Screening of Tribal Children

EPA will provide financial assistance to Indian Tribes or Tribal consortiums to conduct lead-based paint screening activities for tribal children under 6 years of age. The focus should be on tribal children between the ages of 12–36 months because blood-lead levels tend to be highest in this age group, and more children in this age group have blood-lead levels ≥10 µg/dL. Applicants must collect blood-lead samples from tribal children and have the samples analyzed. The applicant must develop or use an existing data management system (manual or automated) to collect and maintain data of all tribal children screened, including laboratory results and data on follow-up cases for tribal children with elevated blood-lead levels. The screening data must be provided to EPA and must include: Indian Tribe name and location, an identifier that protects the privacy of the child, age of housing in which the child resides, age of the child (in months), gender, date of sample collection, method of sample collection (capillary or venous), laboratory analysis method and date, blood-lead level (in µg/dL) and possible exposure routes (paint, hobby, pottery, occupational, etc.) for each tribal child screened.

Applicants must use CLIA-certified laboratories to perform laboratory analysis of blood samples. Operators of on-site devices must successfully participate in the blood-lead proficiency testing program. Laboratories and devices must successfully participate in the blood-lead proficiency testing program that is administered by the Wisconsin State Laboratory of Hygiene under a grant from the Health Care Financing Administration of the Department of Health and Human Services. The regulations implementing CLIA were published in 1992 at 42 CFR part 405. 42 CFR part 405 defines minimum standards for all aspects of laboratory operation, including personnel, qualifications, physical plant, specimen handling, reporting and recordkeeping, etc.) Certification under CLIA is required for all U.S. laboratories performing blood testing.

B. Lead Awareness Outreach Activities

The applicant will launch organized outreach efforts to educate Indian families about the dangers of exposure to lead-based paint hazards among children, distribute educational information, and encourage Indian families to have their children screened for lead. Activities may include training medical professionals, distributing pamphlets, establishing an in-home education program to visit the homes of young tribal children. Applicants may develop their own outreach materials or use already existing products. EPA is aware that many State, tribal, and local departments of health and environmental protection, as well as advocacy groups and community development groups have developed useful lead poisoning prevention materials to conduct outreach and awareness (educational) activities. In addition, EPA and other Federal agencies have developed, and currently provide, a wide range of outreach materials available from the National Lead Information Clearinghouse (1–800–424–LEAD). Trained specialists at the Clearinghouse can help applicants identify specific types of lead awareness materials that already exist and thereby avoid spending resources to recreate these materials. Grant funding may be used to duplicate or implement established materials and activities. Any new materials developed by the applicant must be consistent with the Federal (EPA, Department of Housing and Urban Development (HUD), and Centers for Disease Control (CDC)) lead hazard awareness and poisoning prevention program.

VI. Ineligible Costs

Examples of ineligible costs under this grant, include the following:

1. Buying real property, such as land or buildings.
2. Lead hazard reduction activities, such as performing interim controls or abatement of homes or apartments.
3. Construction activities, such as renovation, remodeling, or building a structure.
4. Buying office equipment that costs more than $5,000, such as a copying machine or a color printer.
5. Buying testing or analysis equipment that costs more than $5,000, such as a portable XRF or a high-speed computer.
6. Hiring consultants for more $10,000 each, such as a public relations or management improvement firm.
7. Paying for case-management costs for tribal children with elevated blood-lead levels (i.e., follow-up visits by a doctor or chelation therapy).

VII. EPA Quality Assurance Requirements

EPA has quality assurance requirements that must be addressed for the blood-lead screening grant. These requirements are addressed in a Quality Assurance Project Plan (QAPjP) which the grantee must submit to EPA after the grant is awarded. The QAPjP must be approved by EPA before any new data are generated. Once approved, the grantee must follow the plan. A QAPjP is not required for the lead awareness (educational) outreach grants.

Quality assurance project plan requirements are stated in the document ''EPA Requirements for Quality Assurance Plans'' (EPA QA/R5). Guidance for the development of QAPjPs can be found in the EPA document ''Guidance for Quality Assurance Project Plans'' (EPA QA/G5). Copies of the quality assurance documents discussed in this unit and other related documents may be down loaded from the EPA Quality Assurance Division web site at http://es.epa.gov/ncerqa/qa/index.html.

To simplify the approval process, a QAPjP template has been developed by EPA specifically for Indian Tribes wishing to respond to this notice. Applicants insert information in the template where indicated by italized print. Applicants may obtain a copy of this specially designed template for this project entitled, ''QAPjP Template for Blood-Lead Screening for Indian Tribes,'' from the person listed under ''FOR FURTHER INFORMATION CONTACT,'' or may download it from the EPA OPPT web site at http://www.epa.gov/lead. The template follows the EPA QAPP requirements as stated in the document ''EPA Requirements for Quality Assurance Plans'' (EPA QA/R5).

VIII. Allocation of Funds

The Agency will have discretion in the distribution of the funds. Grants of up to $30,000 will be issued for applicants interested in submitting proposals for blood-lead screening activities. Applicants may receive grants for up to $50,000 for lead educational outreach activities. Grants may be issued for amounts greater than the amounts specified in cases where a large tribal population is being served or represented by a Tribal consortium. Applicants are encouraged to apply for both screening and outreach grants. Distribution of the funds will be dependent upon the number of qualified applicants, tribal population, and other factors, as appropriate. EPA anticipates

awarding about 25–50 grants in response to this notice.

IX. Pre-Application Requirements, Procedures, and Schedule

Applicants must submit a proposal for the pre-application procedure. The pre-application, as described in this unit, consists of two parts:

1. A work plan.
2. A budget.

The Agency will use the applicant's work plan and budget to select projects to be funded under this grant program. After EPA conducts a review of all submitted pre-applications, successful applicants will be contacted and requested to submit other documents (such as the ''Application for Federal Assistance'' form, a ''Budget Information: Non-Construction Programs'' form, and other required forms to complete the application process. However, for the purposes of the pre-application process, applicants must only submit a work plan and a budget as described in this unit. Applicants will be required to submit a QAPjP for blood-lead screening grants after the awards have been granted. For Tribal consortiums, applicants must submit letters of interest and support from each Tribal Chair that is being represented in the pre-application.

Applicants must submit one original and three copies of the pre-application (double-sided copies). Pre-applications must be reproducible (for example, stapled in the upper left-hand corner, on white paper, and with page numbers). The deadline for EPA's receipt applications is May 23, 2000 in the **Federal Register**.

The pre-application consists of the following two parts.

1. *Work plan*. The work plan must describe the proposed project. The work plan must be no more than 10-typed pages in length (excluding resumes). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi)) and must have margins that are at least 1 inch. The only appendices that EPA will accept are resumes of key personnel and copies of outreach materials (if appropriate to the application.) The format for the work plan must be organized as outlined in this unit:

A. Title, Table of Contents, and Summary

B. Blood-Lead Collection Approach or Lead Awareness (Education) Outreach Approach

C. Project Management

D. Schedule

Appendix

I. Resumes of Key Personnel (also include title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal Government within the last 5 years. The appendix must be no more than 10 pages total and follows the same paging and spacing description as provided in this unit.)

II. Lead Awareness (Educational) Outreach Material (if applying for the lead awareness/educational outreach grant)

2. *Budget*. The budget should include the following categories of costs:

A. Personnel

B. Fringe benefits

C. Travel

D. Equipment

E. Supplies

F. Contractual

G. Other

H. Total direct charges (sum of personnel, fringe benefits, travel, equipment, supplies, contractual, and other)

I. Indirect charges and total (sum of total direct charges and indirect charges.)

X. Evaluation Criteria

EPA will review all applications. Applicants who submit proposals for both blood-lead screening and awareness (educational) outreach must submit two separate pre-application packages, since screening and outreach submissions will be evaluated separately. Applications will be reviewed for quality, strength, and completeness against the following criteria. The maximum rating score of an application is 100 points.

A. Blood-Lead Screening Proposal

1. *General (20 points)*. The applicant's description of implementing a blood-lead screening program for tribal children must address the goals of this notice of funding availability (NOFA) as detailed in Unit II. It must include reasonable and attainable goals and an approach that is clearly detailed. The applicant must describe how the effectiveness of the project will be determined.

The applicant's response to sections A–D of the Work Plan will be used to rate this factor.

2. *Blood-lead collection activity (50 points)*. The applicant's description of plans to develop a blood-lead screening program for tribal children will be evaluated. The following elements will be specifically evaluated:

i. Description of the blood-lead screening program, including sampling, collection, handling, and analysis.

ii. How data will be collected and tracked, including quality control.

iii. Description of the facility/facilities where the blood-lead sampling will occur (i.e., public school, public library, health department facility, clinic, private building, mobile van, etc.).

iv. Provide a percentage estimate of the number of tribal children to be screened in the project. Description of the method that will be used to solicit maximum participation of children in the Indian Tribe.

v. What methods, (i.e., printing, video taping, collaboration with radio or television, etc.) will be used to reach the Indian population regarding the blood-lead screening effort?

vi. How summary data will be reported and disseminated to EPA.

vii. What efforts will be sued to ensure patient confidentiality?

The applicant's response to section B of the Work Plan will be used to rate this factor.

3. *Project management (20 points)*. The applicant should describe positions of staff, roles and responsibilities, and their qualifications. The proposal will also be evaluated using the following questions:

i. Are resumes of key personnel included?

ii. Does the proposal demonstrate the applicant's experience in conducting activities, such as those described in Unit II.?

iii. Does the applicant have previous experience managing similar projects? Are references available?

iv. Does the applicant have access to properly trained staff and facilities to conduct the project?

The applicant's response to section C and the Appendix of the Work Plan will be used to rate this factor.

4. *Budget and schedule (10 points)*. The evaluation will be based on the extent to which the budget and schedule is reasonable, clear, and consistent with the intended use of the funds. Project are expected to completed within 1 year.

The applicant's response to sections D of the Work Plan and the Budget will be used to rate this factor.

B. Lead Awareness (Educational) Outreach Proposal

1. *General (20 points)*. The applicant's description of implementing an educational outreach program must address the goals of this NOFA as described in Unit II. It must include reasonable and attainable goals and an approach that is clearly detailed. The applicant must describe how effectiveness of the project will be determined.

The applicant's response to section A–D of the Work Plan will be used to rate this factor.

2. *Outreach (50 points)*. The applicant should fully describe the proposed educational outreach efforts for Tribal Indian communities. The messages proposed by the applicant should be consistent with EPA/HUD/CDC lead-based paint program policies, guidelines, regulations, and recommendations. The following elements will be specifically evaluated:

i. What types of existing lead educational material will be used (i.e., reports, pamphlets, brochures, video tapes, etc.)? What types, if any, lead awareness (educational) outreach materials will be developed?

ii. How will the lead educational material be distributed throughout the Indian Tribe? Does the applicant indicate how the messages will be delivered, e.g., lecture, written material distribution, one-on-one interviews?

iii. What, if any, printing, special video taping, collaboration with radio or television, or other methods to reach the Tribal Indian population will be used regarding the outreach effort?

iv. Provide a percentage estimate of the number of Tribal families who will receive the lead awareness information. What efforts will be employed to target hard-to-reach tribal communities to inform families about childhood lead poisoning and screening, if applicable. Does the proposal indicate the number of people/families/medical personnel/etc., who will be reached? Does the proposal demonstrate that the proposed outreach materials and activities are suitable for the target audience (i.e., appropriate language comprehension and cultural identification)?

The applicant's response to section B of the Work Plan will be used to rate this factor.

3. *Project management (20 points)*. The applicant should describe positions of staff, roles and responsibilities, and their qualifications. The proposal will also be evaluated using the following questions:

i. Are resumes of key personnel included?

ii. Does the proposal demonstrate the applicant's experience in conducting activities, such as those described in this notice?

iii. Does the applicant have previous experience managing similar projects? Are references available?

iv. Does the applicant have access to properly trained staff and facilities to conduct the project?

v. Estimate the percentage of all Tribal members and families who will be reached with the lead awareness (educational) outreach activities.

The applicant's response to section C of the Work Plan will be used to rate this factor.

4. *Budget and schedule (10 points)*. The evaluation will be based on the extent to which the budget and schedule is reasonable, clear, and consistent with the intended use of the funds. Project periods are not expected to exceed 1 year due to the limited activity involved in the project.

The applicant's response to sections D of the Work Plan will be used to rate this factor.

EPA may require the applicant to modify the proposed work plan based upon the final funding level of the grants.

XI. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a ''rule,'' grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants—Indians, Indians, Lead, Maternal and child health.

Dated: February 8, 2000.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 00–4244 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–898; FRL–6390–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–898, must be received on or before March 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–898 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–898. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–898 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–898. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Gustafson LLC

PP 9F6036

EPA has received a pesticide petition (9F6036) from Gustafson LLC, 1400 Preston Road, Suite 400, Plano, Texas 75093 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of carboxin [5,6-dihydro-2-methyl-1,4-oxathiin-3-

carboxanilide] and its sulfoxide metabolite [5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide], each expressed as the parent compound in or on the raw agricultural commodity canola at 0.03 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of carboxin in plants is adequately understood. The major metabolites in all commodities of wheat were carboxin sulfoxide and sulfone. Metabolites in cottonseed were at too low a level to be identified. The metabolism of carboxin in soybeans is characterized by the oxidation of sulfur (present as sulfoxides and sulfones), cleavage of the oxathiin ring, and conjugation with glucose.

2. *Analytical method*. The analytical method employed for analysis of residues of carboxin in canola from the trials described below used a derivitization of the extracted carboxin residues, which were analyzed with a gas chromatograph with mass selective detector. The limit of quantitation is 0.025 ppm. The current method for the analysis of residues of carboxin in animal tissues, milk and eggs employs alkaline hydrolysis with the liberated aniline derivitized with heptafluorobutyric anhydride. Analysis is by gas chromatography of the derivitized aniline, with mass selective detection (GC/MSD). The limit of quantitation in all tissues was 0.02 ppm and the precision of the method as indicated by the coeficient of variation was 1.9%.

3. *Magnitude of residues*. Gustafson LLC has submitted data to determine residues of carboxin in canola grown from seed, which was treated prior to planting with Vitaflo-280 Flowable fungicide. Four trials were conducted, three at the one X rate and the remaining at the 3 X rate. Two trials were conducted in North Dakota and the remaining in Washington State. The residues detected were all less than the limit of quantitation (LOQ) of 0.025 ppm. The submitted field data indicate that residues of carboxin will not exceed the proposed tolerance of 0.03 ppm in canola grown from treated seed.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies on carboxin demonstrate that the oral and dermal LD_{50} values for the technical material are 2.864 and >4.0 grams/kilograms (g/kg), respectively. The 4–hour inhalation LC_{50} in rats is 4.7 milligrams/Liter (mg/L). Irritation tests in rabbits showed carboxin to be a mild eye irritant and non-irritating to the skin. Carboxin did not cause skin sensitization in studies with guinea pigs.

2. *Genotoxicity*. Bacterial/mammalian microsomal mutagenicity assays were performed and carboxin was found not to be mutagenic. Two chromosomal aberration assays were conducted, in Chinese hamster ovary cells and in mouse bone marrow *in vivo*, and were also negative. A study was performed in rat hepatocytes and demonstrated the induction of unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study in rats conducted in 1989, carboxin was administered by oral gavage to pregnant, Sprague Dawley rats at dosage levels of 10, 90 and 175 mg/kg/day. Decreased maternal body weight gain was seen at dose levels of 90 and 175 mg/kg/day. The report states that there was a slightly reduced mean fetal body weight in the high dose group compared to controls (3.3 vs. 3.5 g). However, a recent evaluation of 59 studies of the historical control data in the final report shows that between 10/83 and 4/87, the range for fetal weight was 3.1 to 5.1 g. Therefore, a mean fetal weight of 3.3 g in the 175 mg/kg/day group is within the historical control range. Maternal toxicity was also noted at this dosage level. Therefore, the no observable adverse effect level (NOAEL) for developmental toxicity is greater than 175 mg/kg/day and the NOAEL for maternal toxicity, based on decreased body weight gain, is 10 mg/kg/day. In a developmental toxicity study in rabbits, carboxin was administered by oral gavage to pregnant White rabbits at dosage levels of 75, 375 and 750 mg/kg/day. There were no treatment related effects at any dose level with the exception of three abortions in the high dose group and one abortion in the mid dose group. An evaluation of historical control data from 28 studies conducted at that time shows abortion rates of 3/17 and 5/16 in two studies, as well as a number of studies in which there were 1 or 2 abortions each. Therefore, considering that there was no maternal toxicity at dose levels of 375 or 750 mg/kg/day carboxin, it would have to be concluded that the 1/16 and 3/16 abortions seen in the mid and high dose groups were spontaneous. The NOAEL for maternal and developmental toxicity was considered to be greater than 750 mg/kg/day. In a dietary 2–generation rat reproduction study, carboxin was fed to male and female Sprague Dawley rats at dietary concentrations of 20, 200 and 400 ppm in males and 20, 300 and 600 ppm in females. At the high dose level there was a decrease in body weight gain in parental males and females and a reduction in pup growth during lactation. No effects on reproduction were observed. The NOAEL for systemic, adult toxicity was 200 ppm (10 mg/kg/day). The NOAEL for offspring growth was 300 ppm (15 mg/kg/day) and the NOAEL for reproductive effects was greater than 400 ppm (20 mg/kg/day).

4. *Subchronic toxicity*. A 13–week rat feeding study was conducted at dietary concentrations of 200, 800 and 2,000 ppm. A reduction in body weight gain was seen in males at 800 and 2,000 ppm and in females at 2,000 ppm. A reduction in blood levels of glucose, protein and/or globulin was seen in males at 800 and/or 2,000 ppm and an increase in urea nitrogen was seen in females at 2,000 ppm. Nephritis was seen in males and females given 800 and 2,000 ppm and in males given 200 ppm. The NOAEL for subchronic toxicity in rats was 200 ppm (10 mg/kg/day) in females and less than 200 ppm in males.

5. *Chronic toxicity*. Carboxin was fed to Beagle dogs for 1–year at dietary concentrations of 40, 500 and 7,500 ppm. There was a reduction in body weight gain in females dogs at dose levels of 500 and 7,500 ppm. At a dose level of 7,500 ppm there was a decreased hamatocrit in males and an increase in serum alkaline phosphates in males and females. The NOAEL for chronic toxicity was 1 mg/kg/day. Carboxin was fed to Sprague Dawley rats for 2 years at dietary concentrations of 20, 200 and 400 ppm in males and 20, 300 and 600 ppm in females in a study completed in 1991. Survival was reduced in high dose males and body weight gain was significantly reduced in high males and females. Chronic nephritis was seen in mid and high dose rats, and this effect was more severe in males. There was no treatment-related increase in tumor incidence in rats. The NOAEL for chronic toxicity was 1 mg/kg/day. Carboxin was fed to B6C3F1 mice for 18 months at dietary concentrations of 50, 2,500 and 5,000 ppm. At dosage levels of 2,500 and 5,000 ppm there was an increased incidence of liver hypertrophy. There

was no treatment-related increase in tumor incidence.

6. *Animal metabolism*. In the rat metabolism study, the percentage of dose did not exceed 0.21% in any tissue and the total percentage of dose in all tissues was 0.26–0.40%. The majority of the dose was excreted in the urine (about 80% within 72 hours). The predominant metabolite was p-hydroxy carboxin sulfide and the other major metabolite was 4-acetamidophenol. Unchanged carboxin was not detected in the excreta.

7. *Metabolite toxicity*. Although no toxicology studies have been conducted on carboxin metabolites per se, none of these would be expected to have significant toxicity. The residue of concern is the parent compound only.

8. *Endocrine disruption*. No specific studies have been conducted to evaluate potential estrogenic or endocrine effects; however, the standard battery of required studies has not demonstrated any evidence that is suggestive of hormonal effects. Evaluation of the rat multi-generational study demonstrated no effect on the time to mating or on the mating and fertility indices. Chronic and sub-chronic toxicity studies in rats and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract or to any endocrine organ associated with endocrine disruption.

C. Aggregate Exposure

1. *Food*. The potential dietary exposure from food was assessed using the conservative assumptions that all residues would be at tolerance levels (existing tolerances and a proposed tolerance on onions and the proposed tolerance on canola) and that all commodities would contain residues (100% crop treated). Although meal from canola is a livestock feed item, the 3X exaggerated rate study showed no residue at the LOQ. Thus, a processing study was not required and no additional residues are expected in livestock. The existing tolerances for animal commodities are adequate. Potential chronic exposures were estimated using NOVIGEN's Dietary Exposure Evaluation Model (DEEM Version 6.76), which uses USDA food consumption data from the 1989–1992 survey. The total dietary exposure is estimated to be about 11% of the reference dose (RfD) for adults and 25% for infants and 23% for children. The chronic RfD is 0.01 mg/kg/day, based on the NOAEL of 1 mg/kg/day in the rat and dog chronic studies and a 100–fold safety factor. The exposure contribution from canola will be less than 0.1% of the RfD.

2. *Drinking water*. There are no established Maximum Concentration Levels (MCL's) for residues of carboxin in drinking water. Health Advisory (HA) Levels for carboxin drinking water for adults are 4 and 0.7 mg/L (longer term and life time HA levels, respectively) and 1–day, 10–day and longer term HA levels are all 1 mg/L for children. Seed treatment uses do not typically require a drinking water assessment. Use of carboxin as a seed treatment (at an application rate of <0.01 ounce active ingredient per acre) is not expected to impact ground water or surface waters or result in significant human exposure.

3. *Non-dietary exposure*. Carboxin is registered only for commercial agricultural use and not for homeowner use. Therefore, non-occupational exposure to the general population from carboxin is unlikely and is not considered in the aggregate exposure assessments.

D. Cumulative Effects

The potential for cumulative effects of carboxin and other substances that have a common mechanism was considered. The mammalian toxicity of carboxin is well defined, with the kidney being identified as target organ. However, since the biochemical mechanism of toxicity of this compound is not known, it cannot be determined if toxic effects produced by carboxin would be cumulative with any other chemical compound. Thus, only the potential risk of carboxin is considered in the aggregate exposure assessment.

E. Safety Determination

Exposure to carboxin would occur primarily from the dietary route. Maximum theoretical levels of carboxin in drinking water were well below drinking water levels of concern for adults and children. Non-occupational exposure to the general population is not expected. Because calculation of the dietary exposure used tolerance levels for all crops and animal commodities and assumed 100% of the crop was treated, the exposure values are considered to be overestimates. Consideration of anticipated residues and actual percent crop treated would likely result in a significantly lower dietary exposure.

1. *U.S. population chronic dietary exposure*. Chronic dietary exposure to the general U. S. population from existing uses and the proposed use on onions and canola is 11.6% of the RfD. The highest levels calculated are for non-nursing infants and children (1–6 years), the exposures are 23.2% and 26.6% of the RfD respectively. Therefore, there is a reasonable certainty that no harm will result from dietary exposure to carboxin residues.

2. *Infants and children*. The potential for carboxin to induce toxic effects in children at a greater sensitivity than the general population has been assessed using the rat and rabbit developmental and two generation reproduction studies. There was no evidence of embryo toxicity or teratogenicity and no effects on reproductive parameters as a result of carboxin exposure. The lowest NOAEL for any developmental effect in these studies (15 mg/kg/day reduced pup growth during lactation in the rat reproduction study) is considerably greater than the NOAEL for systemic toxicity in rats (1 mg/kg/day for nephritis in the rat chronic feeding study). This result demonstrates that there is no prenatal or postnatal sensitivity to carboxin. Therefore, it is inappropriate to assume that infants and children are more sensitive than the general population to the effects from exposure to carboxin residues.

F. International Tolerances

The Codex Alimentarius Commission has not established a maximum residue level for carboxin.

[FR Doc. 00–4242 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6541–7]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Idaho Springs, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed Prospective Purchaser Agreement concerning the Big Five Waste Rock Pile which is a part of the Clear Creek/Central City, Colorado Superfund Site (Site). The proposed Administrative Agreement and Covenant Not to Sue, also known as a Prospective Purchaser Agreement (PPA), enables the City of Idaho Springs, Colorado to buy contaminated property without incurring liability for the current contamination.

DATES: Comments must be submitted by March 9, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Kelcey Land, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Clear Creek/Central City site Prospective Purchaser Agreement (EPA Docket No. CERCLA–8–2000–06).

FOR FURTHER INFORMATION CONTACT: Kelcey Land, Enforcement Specialist, at (303) 312–6393.

SUPPLEMENTARY INFORMATION: Notice of Prospective Purchaser Agreement: notice is hereby given that the terms of an Administrative Agreement and Covenant Not to Sue, also known as a Prospective Purchaser Agreement (PPA) have been agreed to by the City of Idaho Springs, the State of Colorado and the Environmental Protection Agency.

The proposed PPA will allow the City of Idaho Springs, Colorado to purchase certain property on the western edge of Idaho Springs which is a part of the Clear Creek/Central City Superfund Site. The property in question is known as the Big Five Waste Rock Pile which was contaminated by mining waste in the early 1900's. The State and EPA are currently financing a cleanup of the Big Five Waste Rock Pile. The PPA allows the City of Idaho Springs to purchase the property without incurring liability for the existing contamination. The City intends to use the property as part of a bicycle and pedestrian path. In exchange for the covenants, the City has agreed to perform maintenance activities to ensure the protectiveness of the remedy implemented by the State and EPA.

For a period of fifteen (15) days from the date of this publication, the public may submit comments to EPA relating to this proposed Prospective Purchaser Agreement.

A copy of the proposed agreement may be obtained from Kelcey Land (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Colorado 80202–2405, (303) 312–6393. Additional background information relating to the agreement is available for review at the Superfund Records Center at the above address.

It is So Agreed:

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–4232 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6541–6]

Westgate Mobile Home Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Exide Corporation for response cost pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Westgate Mobile Home Superfund Site (Site) located in Greer, Greenville County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before March 9, 2000.

Dated: February 8, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–4234 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62162A; FRL–6488–5]

Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements; Notice of Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on requested waiver.

SUMMARY: EPA is issuing a final decision which approves the request from Texas for a waiver from the Agency's asbestos-in-schools program. A waiver of these requirements is granted since EPA has determined, after notice and comment and opportunity for a public hearing, that Texas is implementing or intends to implement a program of asbestos inspection and management at least as stringent as EPA's program. This notice announces the official grant of the waiver.

ADDRESSES: A copy of the complete waiver application submitted by the State, identified by docket control number OPPTS–62162, is on file and available for review at the EPA Region VI office in Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Neil Pflum, Asbestos Coordinator, (6PD–T), Region VI, Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202; telephone: (214) 665–2295; e-mail: pflum.neil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of special interest to teachers and other school personnel, their representatives, and parents in Texas, and asbestos professionals working in Texas. Since other entities may also be interested, the Agency has not attempted to describe all entities that may be affected by this action. If you have any questions regarding the applicability of this action to any entity, contact the person under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

EPA has established an official record for this action under docket control number OPPTS–62162. The official record consists of the documents referenced in this action and is available by contacting the person under, ''FOR FURTHER INFORMATION CONTACT.''

II. Background

A. What Action is the Agency Taking and under What Authority?

On October 29, 1999, EPA published a notice of proposed waiver in the **Federal Register** (64 FR 58406) (FRL–6386–8) on the proposed grant of a waiver of the asbestos-in-schools program in Texas, soliciting written comments and providing an opportunity for a public hearing. No comments and no requests for a public hearing were received during the comment period, which ended on December 28, 1999. Consequently, no public hearing was held.

EPA is granting, with conditions, a waiver of the asbestos-in-schools program to Texas. The waiver is issued under section 203(m) of TSCA and 40

CFR 763.98. Section 203 is within Title II of TSCA, the Asbestos Hazard Emergency Response Act (AHERA).

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by local education agencies (LEAs) in the nation's elementary and secondary school buildings: the ''AHERA Schools Rule'' (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA schools rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which the State is located.

The Agency recognizes that a waiver granted to any State does not encompass schools operated under the defense dependents' education system (the third type of LEA defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which generally include schools in Indian country. Such schools remain subject to EPA's asbestos-in-schools program.

B. When Did Texas Submit its Request for a Waiver and How is EPA Responding?

On July 27, 1999, Texas Governor George W. Bush, submitted to Gregg A. Cooke, Regional Administrator, EPA Region VI, a letter requesting a full waiver of the requirements of EPA's asbestos-in-schools program, to which was appended supporting documentation.

EPA is hereby **announcing** its final decision to grant a waiver of the asbestos-in-schools program to Texas. The Agency is also describing the information submitted by Texas and the Agency's determinations as to how the waiver request meets the criteria for the grant of a waiver.

C. What was EPA's Determination with Regard to the Completeness of Texas' Waiver Request?

The Texas waiver request has been deemed complete by EPA and contains the following:

1. A copy of the Texas provisions that include its program of asbestos inspection and management in schools. These consist of: The Texas Asbestos Health Protection Act (Texas Revised Civil Statutes Article 4477–3a) and implementing regulations (Texas Administrative Code, Title 25, Part I, Chapter 295, Subchapter C ''Texas Asbestos Health Protection,'' Sections 295.31–295.71).

2. The name of the Texas agency responsible for administrating and enforcing the requirements of a waiver, namely the Texas Department of Health (TDH). Responsible officials include: John A. Jacobi, P.E., Chief, Bureau of Environmental Health; Claren Kotrla, Director, Toxic Substances Control Division; Todd F. Wingler, Chief, Asbestos Programs Branch; and Gordon Leeks, Inspector, PCB/AHERA program--telephone: (512) 834–6600.

3. Reasons, supporting papers, and the rationale for concluding that Texas' asbestos inspection and management programs, for which the waiver request is made, are at least as stringent as the requirements of EPA's program, as discussed in EPA's Determinations in Units II.D.2. and 3.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how Texas plans to handle them, as discussed in EPA's Determination in Unit II.D.6.

5. A statement of the resources that Texas intends to devote to the administration and enforcement of its program, as discussed in EPA's Determination in Unit II.D.5.

6. Copies of Texas laws and regulations relating to the request, including provisions for assessing penalties, as referenced in Unit II.C.1.

7. Assurance from the legal counsel of TDH that the Department has the legal authority necessary to carry out the requirements relating to the waiver request, as indicated in a letter from Susan Steeg, General Counsel, to Gregg Cooke, dated February 22, 1999.

D. What are the Criteria for EPA's Grant of the Waiver and What are EPA's Determinations Relating to These Criteria?

EPA has waived the requirements of the Agency's asbestos-in-schools program for Texas since the Agency has determined that Texas has met the criteria set forth at 40 CFR 763.98. The criteria and EPA's determinations relating to the grant of the waiver to Texas are set forth below:

1. *Criterion:* Texas' lead agency has the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request.

EPA's Determination: EPA has determined that the statutory and regulatory provisions cited at Unit II.C.1. give TDH such legal authority.

2. *Criterion:* Texas' program is or will be at least as stringent as the EPA asbestos-in-schools program.

EPA's Determination: Since Texas has adopted the AHERA schools rule by reference in its regulations, EPA has determined that Texas' program is or will be at least as stringent as EPA's program. See EPA's Determination in Unit II.D.6.

3. *Criterion:* Texas has an enforcement mechanism to allow it to implement the program described in the waiver request.

EPA's Determination: EPA has determined that the compliance and enforcement provisions of Texas' asbestos-in-schools program are adequate to run the program. Inspectors will use site visits to determine if the LEAs are complying with the program. Violations will be cited for enforcement action which can range from warning letters (notices of noncompliance) to administrative actions to civil actions.

4. *Criterion:* TDH has or will have qualified personnel to carry out the provisions relating to the waiver request.

EPA's Determination: EPA has determined that TDH has or will have qualified personnel to carry out the provisions of the waiver. An inspector currently employed by TDH has had experience in conducting asbestos inspections in schools. The Department also employs a number of individuals that have experience in asbestos program enforcement who are available to lend their expertise to the asbestos-in-schools program.

5. *Criterion:* Texas will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.

EPA's Determination: EPA has determined that Texas has adequate resources to administer and enforce the provisions of the program. Texas plans to devote $114,311 to the program annually. It plans to match an annual Federal grant of $85,733, with $28,578 of State funds. The budget allows for two full-time employees, travel, supplies, and training.

6. *Criterion:* Texas gives satisfactory assurances that the necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a

reasonable time to conform with applicable criteria in Units II.D.2-4.

EPA's Determination: As a condition of EPA's grant of the waiver, Texas has given a written assurance satisfactory to EPA (letter from Joseph Fuller, Associate Commissioner, TDH, to Gregg Cooke, dated January 11, 2000) that, if following the grant of the waiver, any provision of either TSCA section 203 or the AHERA schools rule is changed, the State would, within a reasonable period of time, make appropriate changes, as necessary, to the statutory and regulatory provisions of its asbestos-in-schools program to ensure that the program remains at least as stringent as the EPA asbestos-in-schools program.

In addition, as long as the waiver remains in effect, Texas, utilizing adequate resources, will need to continue its asbestos-in-schools implementation and enforcement strategy. EPA may evaluate periodically the adequacy of Texas' program under 40 CFR 763.98, and, under circumstances set forth in the regulation, may, in whole or in part, rescind the waiver if the Agency determines the program to be inadequate.

E. What Recordkeeping and Reporting Burden Approvals Apply to the Texas Waiver Request?

The recordkeeping and reporting burden associated with waiver requests was approved by the Office of Management and Budget (OMB) under OMB control number 2070–0091. This document announces the Agency's grant of the Texas waiver request and imposes no additional burden beyond that covered under existing OMB control number 2070–0091.

III. Materials in the Official Record

The official record, under docket control number OPPTS–62162, contains the Texas waiver request, supporting documentation, and other relevant documents.

List of Subjects

Environmental protection, Administrative practice and procedure, Asbestos, Hazardous Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: February 9, 2000.

Jerry Clifford, Acting

Regional Administrator, Region VI.

[FR Doc. 00–4245 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–271]

Extension of Filing Deadline for Comments to the Petitions Filed by SBC Communications Inc. and Nextel Communications, Inc. Regarding PCS C and F Block Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces an extension of the filing deadline for comments to petitions filed by SBC Communications Inc. and Nextel Communications, Inc.

DATES: Comments are due February 22, 2000 and reply comments are due March 1, 2000.

ADDRESSES: Comments should be filed with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th St. SW Washington, DC 20554. Comments also should be provided to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Room #4–A624, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. SW Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of Public Notice, DA 00–271 released February 11, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov.*

1. In a *Public Notice* released on February 3, 2000, the Wireless Telecommunications Bureau (Bureau) sought comment on Nextel Communications, Inc.'s (''Nextel'') petition regarding the PCS C and F block spectrum and extended the filing deadline for comments to SBC Communications Inc.'s (''SBC'') request for waiver of the eligibility requirements for PCS C and F block licenses.[1] Specifically, the *Public Notice* requested that comments addressing any issues raised by SBC and/or Nextel be filed by February 14, 2000 and that reply comments be filed by February 22, 2000.

2. The National Telephone Cooperative Association (''NTCA''), the Office of the Advocacy of the United States Small Business Administration (''Advocacy'') and the Rural Cellular Association (''RCA'') have filed requests for extension of the filing deadline for comments to the petitions filed by SBC and Nextel.[2] These parties all contend that the comment filing period set by the Bureau does not allow interested parties sufficient time to address the complex issues raised in SBC's and Nextel's submissions.

3. It is the policy of the Commission that extensions of time shall not be routinely granted.[3] Upon review, however, we agree that an extension will afford parties the time to coordinate and file comments that will facilitate the compilation of a more complete record in this proceeding, without causing undue delay to the Commission's consideration of the issues.

4. Accordingly, we extend the filing deadline for comments to petitions filed by SBC and Nextel. Comments addressing any issues raised by SBC and/or Nextel must be filed by February 22, 2000, and reply comments are due by March 1, 2000.[4] Adoption of these deadlines should provide interested parties with an adequate opportunity to prepare and file meaningful comments in this proceeding. Further delay here, however, could have the effect of creating uncertainties for bidders in other spectrum auctions scheduled for this year.

5. In all other respects, the terms and filing instructions set forth in the Public

[1] ''Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.'s Petition Regarding PCS C and F Block Spectrum; Extension of Filing Deadline for Comments to SBC Communications Inc.'s Request for Waiver,'' Public Notice, DA 00–191 (released February 3, 2000). See also ''Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.'s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction,'' Public Notice, DA 00–145 (rel. January 31, 2000) (requesting that comments be filed by February 10, 2000 and that reply comments be filed by February 15, 2000).

[2] See National Telephone Cooperative Association Expedited Request for Extension of Filing Deadline for Comments to SBC Communications Inc.'s and Nextel Communications, Inc.s' Request for Waiver of the Commission's Rules, DA 00–191, filed by NTCA on February 4, 2000; Request for Additional Time to File Comments, DA 00–191, filed by Advocacy on February 7, 2000; Request for Extension of Time, DA 00–191, filed by RCA on February 9, 2000.

[3] 47 CFR 1.46.

[4] To the extent that the Bankruptcy Court's February 7, 2000 order may have constrained the Commission in acting on SBC's and Nextel's petitions, the Second Circuit Court of Appeals' order of February 10, 2000 clarifies that the Commission may take this action.

Notice released on February 3, 2000 (DA 00–191) apply.[5]

6. We reiterate that both SBC's waiver request and Nextel's petition are available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., SW, Washington, DC 20554. Copies of the request and the petition are also available from ITS at 1231 20th St. NW, Washington, DC 20036, or by calling (202) 857–3800.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–4174 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

[5] See ''Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.'s Petition Regarding PCS C and F Block Spectrum; Extension of Filing Deadline for Comments to SBC Communications Inc.'s Request for Waiver,'' Public Notice, DA 00–191 (released February 3, 2000).

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 21, 1999

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 21, 1999.[1]

The information reviewed at this meeting suggests continued strong expansion of economic activity. Nonfarm payroll employment increased substantially further in October and November, and the civilian unemployment rate stayed at 4.1 percent in November, its low for the year. Manufacturing output recorded sizable gains in October and November. Total retail sales rose appreciably over the two months. Housing activity has softened somewhat over recent months but has remained at a high level. Trends in orders suggest that business spending on capital equipment has increased further. The U.S. nominal trade deficit in goods and services rose in October from its average in the third quarter. Aggregate price increases have been smaller in the past two months, reflecting a flattening in energy prices; labor compensation rates have been rising more slowly than last year.

Most market interest rates are up somewhat since the meeting on November 16, 1999. Measures of share prices in equity markets have risen further over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has changed little over the period in relation to the currencies of a broad group of important U.S. trading partners.

M2 continued to grow at a moderate pace in November while M3 surged. For the year through November, M2 and M3 are estimated to have increased at rates somewhat above the Committee's annual ranges for 1999. Total domestic nonfinancial debt has expanded at a pace in the upper end of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at its meeting in June the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 2000, the Committee agreed on a tentative basis in June to retain the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1999 to the fourth quarter of 2000. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5½ percent. In view of the evidence currently available, the Committee believes that prospective developments are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, February 10, 2000.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 00–4216 Filed 2–22–00; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 21, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

Proposed Collection: Submission for OMB Review; Comment Request Entitled American Customer Satisfaction Index

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for approval of an information collection entitled American Customer Satisfaction Index.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection concerning American Customer Satisfaction Index (ACSI). An emergency review was requested by OMB, and a notice was published in the **Federal Register** at 64 FR 36690, July 7, 1999. OMB approved the emergency collection and assigned OMB No. 3090–0271. The information collection also was published in the **Federal Register** on November 26, 1999 at 64 FR 66478 allowing for the standard 60-day public comment period. No comments were received.

The following summary of the proposed information collection activity is designed to support the customer satisfaction policies outlined in Executive Order 12862, ''Setting Customer Service Standards,'' and to establish a means to consistently measure and compare customer satisfaction among high-impact agencies within the Executive Branch. GSA serves as the Executive Agent for this initiative and has selected the ACSI through a competitive procurement process as the vehicle for obtaining the required information.

The ACSI is a cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards The ACSI's ultimate purpose is to help improve the quality of goods and services available to the American people.

The surveys that comprise the Federal Government's portion of the ACSI will be completed subject to the Privacy Act of 1974, Public Law 93–579, December 31, 1974 (5 U.S.C. 552a). The agency information collection will be used solely for the purpose of the survey. The ACSI partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from GSA and the

agency in question. In no case shall any new system of records containing privacy information be developed by GSA, participating agencies, or the contractor responsible for compiling the ACSI. In addition, participating Federal agencies may only provide information used to randomly select respondents from among established systems of records providing for such routine uses.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

DATES: Submit comments on or before March 24, 2000.

ADDRESSES: Comments concerning this notice should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to James L. Dean, Director, Committee Management Secretariat, Room G–230 (MC), 1800 F Street, NW, Washington, DC 20405, or e-mail to James.Dean@gsa.gov.

FOR FURTHER INFORMATION CONTACT: James Dean, Director, Committee Management Secretariat, General Services Administration at (202) 273–3563, or by e-mail to James.Dean@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to consult with and solicit comments from the public and affected agencies concerning the proposed collection of information under the ACSI to help improve the quality of goods and services available to the American people.

B. Annual Reporting Burden

Participation by Federal agencies in the ACSI is expected to vary as new customer segments measured are added or deleted. However, projected estimates for fiscal years 1999 through 2001 are as follows:

Fiscal Year 1999—30 Customer Segments

Respondents: 7,800; annual responses: 7,800; average minutes per response: 10; burden hours: 1,300.

Fiscal Year 2000—90 Customer Segments

Respondents: 23,400; annual responses: 23,400; average minutes per response: 10; burden hours: 3,900.

Fiscal Year 2001—200 Customer Segments

Respondents: 52,000; annual responses: 52,000; average minutes per response: 10; burden hours: 8,667.

COPY OF PROPOSAL: A copy of this proposal may be obtained by contacting James Dean at the above address.

Dated: February 16, 2000.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–4267 Filed 2–22–00; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection: Submission for OMB Review; Comment Request Entitled Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for approval of a new information collection entitled Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award System.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Questionnaire: CD–ROM of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data system. The information collection was published in the **Federal Register** on November 29, 1999 at 64 FR 66638 allowing for the standard 60-day comment period. No comments were received.

The Federal Domestic Assistance Catalog Staff, General Services Administration is requesting that users of the CD–ROM version of the Catalog of Federal Domestic Assistance and Federal Assistance Award Data System reply, on a voluntary basis to a survey designed to determine user satisfaction and solicit comments that will help them understand users' needs. The Federal Domestic Assistance Catalog Staff will use information solicited from users to improve its usefulness to customers. Without this information, CD–ROM users' needs may go unrecognized. This is a voluntary survey that will take approximately 5 minutes to complete.

DATES: Submit comments on or before March 24, 2000.

ADDRESSES: Comments concerning this notice should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to: Jacqueline Garrett, Governmentwide Information Systems Division, Room 101—Reporters Building, 300 7th Street, SW, Washington, DC 20407, or e-mail to Jackie.Garrett@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Garrett, Governmentwide Information Systems Division, Room 101—Reporters Building, 300 7th Street, SW, Washington, DC 20407, or e-mail to Jackie.Garrett@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to solicit comments from users of the CD–ROM version of the Catalog of Federal Domestic Assistance (CFDA) and Federal Assistance Award Data System (FAADS) to improve its usefulness to customers.

B. Annual Reporting Burden

Respondents: 1,000; *annual responses:* 1,000; *average hours per response:* .10; *burden hours:* 100.

COPY OF PROPOSAL: A copy of this proposal may be obtained by contacting Jacqueline Garrett at the above address.

Dated: February 16, 2000.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–4268 Filed 2–22–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Management and Budget; Notice or Availability of Revised Inventory of Commercial Activities

ACTION: Notice of availability of revised inventory of commercial activities.

SUMMARY: Notice is hereby given, in compliance with sec. 2(c)(2) of the Federal Activities Inventory Reform Act, Public Law 105–270, that the commercial activities inventory of the Department of Health and Human Services, originally made public on September 30, 1999, has been changed as a result of a challenge from an interested party. The change affects only 31 FTE's, which were removed from the portion of the inventory pertaining to the program Support Center. All other parts of the inventory remain unchanged. The entire inventory is available for public inspection on the DHHS website, at www.hhs.gov/progorg/oam/fair.

FOR FURTHER INFORMATION CONTACT: Mike Colvin, Office of Acquisition

Management, Office of the Assistant Secretary for Management and Budget, 202–690–7887.

Dated: February 16, 2000.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 00–4163 Filed 2–22–00; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and for the State Children's Health Insurance Program for October 1, 2000 through September 30, 2001

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2001 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2000 through September 30, 2001. This notice announces the calculated ''Federal Medical Assistance Percentages'' and ''Enhanced Federal Medical Assistance Percentages'' that we will use in determining the amount of Federal matching in State medical assistance (Medicaid), State Children's Health Insurance Program (SCHIP) expenditures, and for the annual reconciliation of contingency funds under Title IV–A. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. Programs under title XXI began functioning in fiscal year 1998. The percentages in this notice apply to State expenditures for assistance payments, medical services and medical insurance services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The ''Federal medical assistance percentages'' are for Medicaid. These percentages will also be used for the annual reconciliation of any Contingency funds received under the Temporary Assistance for Needy Families program.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the State Children's Health Insurance Programs under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3). There is no specific requirement to publish these percentages. We include them in this notice for the convenience of the States.

EFFECTIVE DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 2000 ending September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Stewart or Jennifer Tolbert, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.588—Temporary Assistance for Needy Families; 93.563—Child Support Enforcement; 93.659—Adoption Assistance; 93.778—Medical Assistance Program; 93.767—State Children's Health Insurance Programs)

Dated: February 15, 2000.

Donna E. Shalala,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2000–SEPTEMBER 30, 2001 (FISCAL YEAR 2001)

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Alabama	69.99	78.99
Alaska	56.04	69.23
American Samoa	50.00	[1] 65.00
Arizona	65.77	76.04
Arkansas	73.02	81.11
California	51.25	65.88
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	50.00	65.00
District of Columbia	70.00	[2] 79.00
Florida	56.62	69.63
Georgia	59.67	71.77
Guam	50.00	[1] 65.00
Hawaii	53.85	67.70
Idaho	70.76	79.53
Illinois	50.00	65.00
Indiana	62.04	73.43
Iowa	62.67	73.87
Kansas	59.85	71.90
Kentucky	70.39	79.27
Louisiana	70.53	79.37
Maine	66.12	76.28
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	56.18	69.33
Minnesota	51.11	65.78
Mississippi	76.82	83.77
Missouri	61.03	72.72
Montana	73.04	81.13
Nebraska	60.38	72.27
Nevada	50.36	65.25
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	73.80	81.66
New York	50.00	65.00
North Carolina	62.47	73.73
North Dakota	69.99	78.99
Northern Mariana Islands	50.00	[1] 65.00
Ohio	59.03	71.32
Oklahoma	71.24	79.87
Oregon	60.00	72.00
Pennsylvania	53.62	67.53
Puerto Rico	50.00	[1] 65.00
Rhode Island	53.79	67.65
South Carolina	70.44	79.31
South Dakota	68.31	77.82
Tennessee	63.79	74.65
Texas	60.57	72.40
Utah	71.44	80.01
Vermont	62.40	73.68
Virgin Islands	50.00	[1] 65.00
Virginia	51.85	66.30
Washington	50.70	65.49
West Virginia	75.34	82.74
Wisconsin	59.29	71.50

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2000–SEPTEMBER 30, 2001 (FISCAL YEAR 2001)—Continued

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Wyoming	64.60	75.22

[1] For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[2] The value in the table was set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for DC is 50.00.

[FR Doc. 00–4164 Filed 2–22–00; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring STD Prevalence and Reproductive Health Services for Adolescent Women in Special Settings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring STD Prevalence and Reproductive Health Services for Adolescent Women in Special Settings.

Times and Dates: 9 a.m.—9:30 a.m., March 10, 2000 (Open); 9:30 a.m.—4:30 p.m., March 10, 2000 (Closed).

Place: Centers for Disease Control and Prevention, Corporate Square, Building 11, Conference Room 2214, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement for Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring STD Prevalence and Reproductive Health Services for Adolescent Women in Special Settings.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–4203 Filed 2–22–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Sexually Transmitted Disease/Human Immunodeficiency Virus Prevention Training Centers in Response to Program Announcement #00031

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Sexually Transmitted Disease/Human Immunodeficiency Virus Prevention Training Centers in Response to Program Announcement #00031.

Times and Dates: 8:30 a.m.—9 a.m., March 27, 2000 (Open); 9 a.m.—4:30 p.m., March 27, 2000 (Closed); 8:30 a.m.—4:30 p.m., March 28, 2000 (Closed).

Place: Holiday Inn Select—Atlanta/Decatur, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #00031: Sexually Transmitted Disease/Human Immunodeficiency Virus Prevention Training Centers.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–4204 Filed 2–22–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Family Assistance; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration of Children and Families (ACF) as follows: Chapter KH, The Office of Family Assistance (OFA) (61 FR 35770), as last amended, July 8, 1996. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 authorized the implementation of the Temporary Assistance for Needy Families Program (TANF) which replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and related programs known as the Job Opportunity and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program that were administered by OFA. OFA handles policy issues related to the closeout of the AFDC, JOBS and EA programs. Other outstanding closeout issues are handled in consultation with other responsible ACF components. This Notice reflects the OFA's new structure, which refocuses efforts to meet performance goals of economic independence for families and healthy development of children. Specifically, delete Chapter KH in its entirety, and replace it with the following:

KH.00 Mission. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters

relating to the Temporary Assistance for Needy Families (TANF) Program, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193). This program promotes temporary assistance and economic self-sufficiency for children and families. The Office provides leadership, direction and technical guidance, with ACF Regional Offices, to the States and Territories on the Administration of the Temporary Assistance for Needy Families Block Grant and Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands. The Office refocuses efforts to increase economic independence and productivity for families. It provides direction and guidance in the collection and dissemination of performance and other valuable data for these programs. The Office provides technical assistance to States, Territories, localities and community groups, and assesses State and Territorial performance in administering these programs; reviews State planning for administrative and operational improvements; and recommends actions to improve effectiveness.

Delete KH.10 Organization in its entirety and replace with the following:

KH.10 Organization. The Office of Family Assistance is headed by a Director, who reports to the Assistant Secretary for Children and Families. The office is organized as follows:

Office of the Director (KHA)
Division of Policy and Program Development (KHB)
Division of Technical Assistance and Training (KHC)
Division of TANF Information Network (KHD)

KH.20 Functions. A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out the responsibilities of the office. The Executive Assistant assists the Director, Deputy Director and OFA Divisions in providing general oversight of management, administrative and personnel activities and in coordinating the formulation and execution of program and administrative budgets.

Delete KH.20 Functions, Paragraph B in its entirety and replace with the following:

B. The Division of Policy and Program Development provides direction and guidance in the nationwide administration of the Temporary Assistance for Needy Families programs, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) and Aid to the Aged, Blind, and Disabled in Guam, Puerto Rico and the Virgin Islands. The Division proposes legislation and implements national policy, develops regulations to implement new laws and prepares policy interpretations. The Division provides guidance and direction, analyzes, tracks and disseminates information on State progress in achieving work participation goals. The Division shapes and enables communication between Federal, State and local entities to coordinate cross-cutting welfare to work related policies. Collaborates with ACF and HHS components on Tribal TANF plans and other related programs such as: Head Start, Child Care programs and programs related to child welfare. Develops State plan procedures and evaluates State TANF plans with internal and external collaboration to identify critical issues contained in the plans and amendments; prepares congressional materials, testimonies and speeches. Collaborates with and provides program guidance to the Office of General Counsel (OGC) on litigation.

Delete KH.20 Functions, Paragraph C in its entirety and replace with the following:

C. The Division of Technical Assistance and Training provides technical assistance to States, Territories, localities and community groups; assists in the assessment of State and Territorial performance in administering the Temporary Assistance for Needy Families Block Grant and Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; and recommends and promotes improvements in outcomes for clients. The Division develops and implements strategies to assist grantees in implementing and improving their self-sufficiency programs. The Division of Technical Assistance and Training develops and delivers technical assistance focusing on innovative policy and program design approaches resulting in increased employment for needy families with children. The Division identifies best practices and shares information through conferences, publications, the Internet and resource networks. The Division ensures compliance with Federal laws and regulations and promotes cross-program policy initiatives to self-sufficiency and family-focused services. Collaborates with ACF and HHS components and other Federal agencies to deliver family-focused services. Promotes job development through agreements with other Federal agencies and corporations.

Add KH.20 Functions, Paragraph D. Add the following to establish Paragraph D.

D. The Division of TANF Information Network serves as a communication and information center that links other relevant national, Federal, State and local organizations and ideas via the ACF WELNET (an interactive welfare reform database) in providing guidance and direction to promising practices that promote work and success in the workplace for low-income individuals. It also collects and disseminates program, statistical and financial information about the Temporary Assistance for Needy Families Block Grant and Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands and other TANF related welfare programs in the United States; and pertinent statutes, regulations, program instructions and guidance. The Division serves as a catalyst to connect other relevant national, Federal, State and local organizations to move effectively, coalesce/share resources and information relative to increasing the economic self-sufficiency of low-income families. The Division has responsibility for maintaining and updating several web sites in a manner that is designed to provide easy access; targeted, focused, useful information; customer-friendly organization and search capabilities. The Division compiles, analyzes, and evaluates program information for the TANF program making that information available to both internal and external parties. The Division responds to welfare reform inquiries from the public and private sector from both domestic and international entities. The Division also responds to Freedom of Information Act (FOIA) requests.

Dated: February 15, 2000.

Alvin C. Collins,

Director, Office of Family Assistance.

[FR Doc. 00–4248 Filed 2–22–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 92N–0297 and 88N–0258]

Agency Information Collection Activities; Announcement of OMB Approval; Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 3, 1999 (64 FR 67720), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0435. The approval expires on February 28, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 15, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–4166 Filed 2–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2000, 8:30 a.m. to 3 p.m.

Location: Corporate Bldg., conference room 20B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or e-mail SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: FDA staff will make a brief presentation to the committee on the least burdensome provisions of the FDA Modernization Act of 1997. The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an excimer laser for the reduction or elimination of hyperopia up to +6.00 D of sphere and up to -6.00 D of astigmatism at the spectacle plane using laser in situ keratomileusis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 10, 2000. Formal oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 10, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–4165 Filed 2–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 24, 2000, 9:30 a.m. to 4 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: There will be a brief FDA presentation of the least burdensome provisions of the FDA Modernization Act of 1997. The committee will discuss, make recommendations, and

vote on a premarket approval application for a peptide test indicated as an aid in the diagnosis of congestive heart failure.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 15, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 15, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–4167 Filed 2–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–38]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions of Participation for Rural Health Clinics, 42 CFR 491.9 Subpart A;

Form No.: HCFA–R–38 (0938–0334);

Use: This information is needed to determine if rural health clinics meet the requirements for approval for Medicare participation.

Frequency: Other (Initial application for Medicare);

Affected Public: Business or other for profit; individuals or households; not for profit institutions; farms; Federal Government; and State, Local or Tribal Government;

Number of Respondents: 3,528;

Total Annual Responses: 3,528;

Total Annual Hours: 9,456.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 3, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–4179 Filed 2–22–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–289]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Lifestyle Modification Program Demonstration;

Form No.: HCFA–R–289 (0938–0777);

Use: The Health Care Financing Administration (HCFA) through its Office of Clinical Standards and Quality (OCSQ) is planning to conduct a new demonstration to test the feasibility and cost effectiveness of cardiovascular lifestyle modification. This demonstration will focus on Medicare provider sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the indications of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration will test the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries. In addition, the demonstration will test the use of contractual agreements for administration, claims processing and payment, and routine monitoring of quality of care.

Frequency: On occasion, Weekly, Monthly, and Quarterly;

Affected Public: Individuals or households, and not-for-profit institutions;

Number of Respondents: 22;

Total Annual Responses: 9,000;

Total Annual Hours: 1,500.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to

the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 3, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–4180 Filed 2–22–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Invitation for Proposals

AGENCY: Department of the Interior, Office of the Secretary.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for restoration of resources and services injured by the Exxon Valdez oil spill. The Invitation to Submit Restoration Proposals for Federal Fiscal Year 2001, a booklet explaining the process, is available from the Trustee Council office.

DATES: Proposals are due April 14, 2000, at 5:00 p.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council, 645 ''G'' Street, Suite 401, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: The Restoration Office, (907) 278–8012 or toll free at (800) 478–7745 (in Alaska) or (800) 283–7745 (outside Alaska) or via e-mail at restoration@oilspill.state.ak.us.

SUPPLEMENTARY INFORMATION: Following the Exxon Valdez oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan calls for annual work plans identifying projects to accomplish restoration. Each year proposals for restoration projects are solicited from a variety of organizations, including the public.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–4160 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–RG–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting

AGENCY: Department of the Interior, Office of the Secretary.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: March 15, 2000, at 9:00 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include discussions about the draft Gulf Ecosystem Monitoring plan and the role of the Public Advisory Group.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–4159 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–RG–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0049).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 24, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR 250, Subpart B, Exploration and Development and Production Plans (1010–0049).

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval prior to commencing these activities. The implementing regulations and associated information collection

requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans (subpart B). In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deep water operations plans and conservation information), etc., that are necessary for MMS to approve the exploration or development and production activities.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

We are resubmitting this collection of information to OMB to obtain official approval of several aspects of the plan submissions that have developed over time. In addition to the currently approved requirements, we will seek OMB approval of the number of copies respondents submit; a new ''OCS Plan Information Form'' (form MMS–137) for use in the GOM Region; and two air emissions spreadsheets (forms MMS–138 and MMS–139) currently used in the GOM Region. Except for form MMS–137, these are not new requirements. We consider the burdens for these are already included in the burdens currently approved for developing and submitting EPs or DPPs (development operations coordination documents (DOCDs)) in the western GOM.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved burden for this collection is 269,438 reporting and 260 recordkeeping hours, based on:

(1) Preliminary activities: 1 hour per notice.

(2) Initial EP or DPP (DOCD in western GOM): 580 hours per plan, including forms.

(3) Deepwater Operations Plans: 580 hours per plan.

(4) Revised EPs: 80 hours per revision, including forms.

(5) Revised DPPs (DOCSs in western GOM): 82 hours per revision, including forms.

(6) Recordkeeping: 2 hours per respondent.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens for this collection.

Comments

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 14, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–4175 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0050).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to revise the currently approved collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 24, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street, Herndon, VA 20170–4817. Our practice is to make comments, including names and home

addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way (1010–0050).

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. 1334(e), authorizes the Secretary of the Interior (Secretary) to grant rights-of-way through the submerged lands of the OCS for pipelines "* * * for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. * * *" This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS. In addition, MMS issues Notices to Lessees and Operators to supplement regulations to provide guidance and clarification.

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery and MMS regulations specify filing fees for applications.

OMB has approved the information collection requirements in current subpart J regulations under control numbers 1010–0050 and 1010–0108. The first is the primary collection for subpart J. The latter was approved in connection with a final rule amending § 250.1000(c) to implement a provision of the new Memorandum of Understanding between DOI and the Department of Transportation (DOT). Our submission will consolidate these two subpart J collections under 1010–0050.

The pipelines are designed by the lessees and transmission companies that install, maintain, and operate them. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. The information collected under subpart J is used by MMS field offices to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease. The records concerning pipeline inspections and tests are monitored by MMS inspectors to ensure safety of operations and protection of the environment. Specifically, MMS uses the information to:

- Monitor schedules for pipeline construction, installation, and tests to enable MMS personnel to schedule their workload to permit the witnessing of these operations to ensure safety and environmental protection.
- Review applications for pipeline permits and rights-of-way and pipeline construction reports to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS.
- Review applications for pipeline rights-of-way to ensure compliance with applicable rules of the DOT and other legal and administrative requirements for the granting of a pipeline right-of-way.
- Review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities.
- Review pipeline repair procedures to ensure that the lessee takes appropriate safety and pollution-prevention measures.
- Review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.).
- Review reports on findings of historical or potential archeological significance to ensure that such resources are protected.
- Review notification of relinquishment of a right-of-way grant to ensure that all legal obligations are met and that a pipeline will be abandoned properly.
- Determine the point at which DOI or DOT has regulatory responsibility for a pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

This collection of information does not require respondents to submit proprietary information. If such were submitted, we will protect it under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 290 Federal OCS oil, gas, and sulphur lessees and holders of pipeline rights-of way.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved burden for this collection is 67,538 hours for 1010–0050 and 1,051 hours for 1010–0108, for a combined total of 68,589 hours. This burden consists of various requirements, but the major burdens are:

- 140 hours to apply for a pipeline installation or right-of-way grant.
- 40 hours to modify an approved lease-term pipelines or right of way grant.
- 20 hours per year to inspect pipeline routes and maintain records.
- 16 hours to submit pipeline construction report.
- 10 hours to submit corrective action plan remedial action.
- 8 hours to apply for assignment of a right-of-way grant.
- 8 hours to notify and report on pipeline safety equipment problems.

Estimated Annual Recordkeeping "Non-Hour Cost" Burden: The currently approved burden for collection 1010–0050 is $251,000; there was no non-hour cost burden under 1010–0108. This cost burden is for the application fees required in §§ 250.1010(a) and 250.1013(b).

Comments

We will summarize written responses to this notice and address them in our submission for OMB approval. As a

result of your comments and consultations with a sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: February 15, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–4176 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0078).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 24, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street, Herndon, VA 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart O, Training.

OMB Control Number: 1010–0078.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. 1334(e), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on resources of the OCS; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' This authority and responsibility are among those delegated to the Minerals Management Service (MMS). This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS. In addition, MMS issues Notices to Lessees and Operators to supplement regulations to provide guidance and clarification.

The MMS uses the information collected under subpart O to ensure that certain workers in the OCS are properly trained in the use of equipment and procedures in drilling, well-completion, well-workover, and well-servicing well control operations and production safety system operations in order to avoid hazards inherent in those operations. This information is necessary to verify personnel training compliance with the requirements. Specifically, MMS uses the information to:

- Evaluate new programs and curriculum changes for technical accuracy and ensure that the programs

incorporate appropriate instruction, simulation, and hands-on training activities.

- Review attendance records to verify that a student has attended the entire course before issuance of a certificate.
- Schedule MMS onsite evaluations and audits of training organizations.
- Ensure that personnel are trained in order to maintain a state of preparedness essential for safe operations.

We will protect proprietary information submitted according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. We will protect personal information such as social security numbers according to the Privacy Act. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Primarily on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees and 55 training schools.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved burden for this collection is 2,961 hours. This burden consists of various requirements, but the major burdens are:

- 200 hours to develop and submit alternative training program.
- 100 hours to apply for approval of new training program accreditation.
- 53 hours to renew training program accreditation.
- 15 hours to submit annual course schedule and changes.

Estimated Annual Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens for this collection.

Comments

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments and consultations with a sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 16, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–4177 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Guadalupe Mountains National Park, Texas

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for a General Management Plan for Guadalupe Mountains National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the General Management Plan for Guadalupe Mountains National Park. This effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. Alternatives to be considered include no action and other alternatives, including a preferred alternative, which will be developed throughout the public scoping process. Each alternative will set forth a clearly defined direction for resource preservation and visitor use in Guadalupe Mountains National Park.

Major issues at Guadalupe Mountains National Park include (1) management and development in the gypsum dunes on the westside of the park; (2) maintenance of historic structures; (3) development and maintenance of campsites and other in-park facilities, particularly at Pine Springs; (4) relationship of the park to local governments and Native American communities; (5) reintroduction of native species extirpated from the park; and (6) management and restoration of existing habitats within the park, including McKittrick Canyon. Other issues will be identified during the public scoping process.

Comments: If you wish to comment on issues of concern associated with the general management plan and environmental impact statement, you may submit your comments by any one of several methods. You may mail comments to Mr. Ellis Richard, Superintendent, Guadalupe Mountains National Park, HC 60, Box 400, Salt Flat, TX 79847. You may also comment via the Internet to 'gumo superintendent@nps.gov'. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: General Management Plan/Environmental Impact Statement, GUMO, Package 214'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Mr. Ellis Richard directly at (915) 828–3251. Finally, you may hand-deliver comments to Guadalupe Mountains National Park, HC 60, Salt Flat, TX 79847. Our practice is to make comments, including names

and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION: Contact Mr. Ellis Richard, Superintendent, Guadalupe Mountains National Park, (915) 828–3251.

Dated: February 8, 2000.

John A. King,

Acting Director, Intermountain Region.

[FR Doc. 00–4161 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held March 8 and 9, 2000 at the Furnace Creek Inn within Death Valley National Park.

The main agenda will include:

- Status of Death Valley National Park's General Management Plan;
- Status of Natural Resource Plans: Burro Management, Water Management; Wilderness Matters; Development Concept Plans;
- Status of Visitor Services: Exhibit Renovation; Outreach;
- Appropriate field trips within Death Valley National Park.

The Advisory Commission was established by PH #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 00–4162 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 191–2000]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Environment and Natural Resources Division, Department of Justice, proposes to modify two systems of records last published in the **Federal Register** on September 30, 1977 (42 FR 53351), and entitled, ''Appraisers File (JUSTICE/LDN–001),'' and ''Title Abstractors, Attorneys and Insurance Corporations File (JUSTICE/LDN–004).''

Specifically, the Division will modify the system notice by consolidating the two notices into one and renaming it, ''Appraisers, Approved Attorneys, Abstractors and Title Companies Files Database System (JUSTICE/ENRD–001)''; updating and clarifying information, and adding a routine use (information may be shared with other federal agencies). For public convenience, the revised system notice has been printed below in full, replacing the previous notice in its entirety.

Sections 552a(e) (4) and (11) of the Privacy Act require that the public be given 30 days to comment on new routine uses of information in the system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 40 days to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by April 3, 2000.

DATES: The proposed modifications to the System of Records will be effective April 3, 2000, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comments to the Department of Justice, ATTN: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, National Place Building, Room 1400 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

Dated: January 27, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/ENRD—001

SYSTEM NAME:

Appraisers, Approved Attorneys, Abstractors and Title Companies Files Database System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Justice, Environment and Natural Resources Division, Land Acquisition Section, 601 Pennsylvania Avenue, NW, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Appraisers who have prepared real property appraisals, whose work has been reviewed by the Appraisal Unit, Environment and Natural Resources Division, in conjunction with anticipated or pending litigation. (2) Attorneys, title abstractors, and title insurance companies that have applied and been deemed qualified to prepare title evidence for land acquisitions by the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes automated records relating to (1) the qualifications of appraisers who have provided real estate appraisals to the Appraisal Unit, Environment and Natural Resources Division, in conjunction with anticipated or pending litigation; and (2) records relating to title evidence providers, including applications, supporting information, and information relating to qualifications received by the Environment and Natural Resources Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to establish and maintain this system is contained in 28 U.S.C. 509 and 510, 28 CFR part O, subpart M, and 40 U.S.C. 257 et seq., which authorize the Attorney General to conduct litigation, particularly proceedings for condemnation of property, and 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Attorney General to create and maintain federal records of agency activities.

PURPOSE(S):

(1) Appraisal information is maintained so that an appraiser's credentials, experience, and

performance can be referenced and evaluated when the Division seeks an appraiser for work in anticipated or pending litigation. (2) Title evidence information is maintained so that a provider's performance can be referenced when the Division seeks a qualified provider for work being reviewed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) Records may be disclosed to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(2) Records relating to attorneys, abstractors, or title companies may be disclosed to other Federal agencies to help them hire such professionals.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is kept on a computer database.

RETRIEVABILITY:

Information is retrieved by name of the subject, Department of Justice case number, appraisal review number, or land unit number.

SAFEGUARDS:

Only employees of the Land Acquisition Section with access to the Division computer system have access to the system of records.

RETENTION AND DISPOSAL:

Records are retained during their useful life subject to National Achieves and Records administration record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Land Acquisition Section, Environment and Natural Resources Division, U.S. Department of Justice, 601 Pennsylvania Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Address inquiries to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Policy, Legislation and Special Litigation Section; PO Box 4390; Ben Franklin Station; Washington, DC 20044–4390.

RECORD ACCESS PROCEDURES:

Submit in writing all requests for access, and clearly mark the envelope and letter, ''Privacy Act Access Request.'' Include in the request you full name, data and place of birth, case caption, or other information which may assist in locating the records you seek. Also include your notarized signature and a return address. Direct all access requests to the the FOIA/Privacy Act Coordinator; Environment and Natural resources Division; Policy, Legislation and Special Litigation Section; PO Box 4390, Ben Franklin Station, Washington, DC 20044–4390.

CONTESTING RECORD PROCEDURES:

If you wish to contest or amend information maintained in the system, Direct your request to the FOIA/PA Coordinator Stating Clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information you seek.

RECORD SOURCE CATEGORIES:

The record subject is the principal record source. The sources may be supplemented by others having knowledge of the subject's professional qualifications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–3115 Filed 2–22–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 192–2000]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Environment and Natural Resources Division, Department of Justice, proposes to modify a system of records last published in the **Federal Register** on December 11, 1987 (52 FR 47274), and entitled, ''Lands Docket Tracking System (JUSTICE/LDN–003).'' The Division proposes these modifications because the Lands Docket Tracking System has been replaced by a successor case management and tracking system and it did not include the broader category of the Division's case-related files.

Specifically, the Division will modify the system notice by renaming it, ''Environment and Natural Resources Division Case and Related Files System (JUSTICE/ENDR–003)''; revising the category of records covered by the system (adding case files and attorney and employee timekeeping files); revising the description of the case tracking system to reflect new and successor programs; adding routine uses for the new category of records (primarily relating to the management and handling of case files during investigation and litigation, and to public access to the records pursuant to federal statutes or regulations); deleting and revising routine uses to provide clarity and additional specificity; revising the categories of records to show that the system contains national security, civil investigatory and criminal law enforcement information; and indicating that a rule has been promulgated to exempt the system from certain Privacy Act provisions. Because of the number of changes made and for public convenience, the revised system notice has been printed below in full, replacing the previous notice in its entirety. The exemption of this system is more fully described in the Proposed Rules Section of today's **Federal Register**.

Section 552a(e)(4) and (11) of the Privacy Act require that the public be given 30 days to comment on new routine uses of information in the system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 40 days to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by April 3, 2000.

DATES: The proposed modifications to the System of Records will be effective April 3, 2000, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comments to the Department of Justice, Attn: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, National Place Building, Room 1400 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

Dated: January 27, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/ENRD–003

System name: Environment and Natural Resources Division Case and Related Files System.

Security classification: Unclassified.

System location: Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania

Ave., NW, Washington, DC 20530; DC offices (601 D Street, NW, Washington, DC 20004; 601 Pennsylvania Ave., NW, Washington, DC 20004; 1425 New York Ave., NW, Washington, DC 20005; 801 Pennsylvania Ave., NW, Washington, DC 20004); field offices (in Anchorage, AK; Sacramento, CA; San Francisco, CA; Denver, CO; Newton Corner, MA; and Seattle, WA); and Federal Records Center, Suitland, MD 20409.

Categories of individuals covered by the system: (a) Individuals being investigated in anticipation of civil or criminal suits; (b) Individuals involved in civil or criminal suits; (c) Defense or plaintiff's counsel(s); (d) Information sources; (e) Individuals relevant to the development of civil or criminal suits, including expert and other witnesses; (f) Individual plaintiffs or defendants; and (g) Attorneys, paralegals, and other employees of the Environment and Natural Resources Division directly involved in these cases or matters.

Categories of records in the system: (1) Records in this system are established and maintained for litigation and related activities by the Environment and Natural Resources Division, including, but not limited to, the protection, use and development of natural resources and public lands, wildlife protection, Indian rights and claims, cleanup of hazardous waste sites, acquisition of private property for federal use, prosecution of environmental crimes, enforcement of environmental laws, and defense of environmental challenges to government programs and activities. The case files contain court records (such as briefs, motions, and orders), inter-agency and intra-agency correspondence, legal research, and other related documents. These records may include civil investigatory and/or criminal law enforcement information and information classified pursuant to Executive Order to protect national security interests. (2) Summary information of these cases or matters (such as names of principal parties or subjects, court docket numbers, status, and attorney assignments) is maintained in an automated case management system (CMS). (3) A timekeeping function for attorneys, paralegals, and other employees of the Environment and Natural Resources Division supplements the automated case management system.

Authority for maintenance of the system: Authority to establish and maintain this system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Attorney General to create and maintain federal records of agency activities.

Purpose(s): Case records are maintained to litigate or otherwise resolve civil or criminal cases or matters handled by the Environment and Natural Resources Division. The automated case tracking and timekeeping system are maintained to manage and evaluate the Division's litigation and related activities.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(a) In any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature), the record may be disseminated to the appropriate federal, state, local, tribal, or foreign agency charged with the responsibility of investigating, defending or pursuing such violation, civil or criminal claim or remedy, or charged with enforcing, defending or implementing such law;

(b) In the course of investigating a potential or actual violation of any law, or during the course of (or in preparation for) a trial or hearing for such a violation, a record may be disseminated to an individual, agency or organization, if there is reason to believe that such individual, agency or organization possesses relevant information relating to the investigation (or trial or hearing) and the dissemination is reasonably necessary to elicit information or to obtain the cooperation of a witness or an agency;

(c) A record relating to a case or matter may be disseminated in a federal, state, local, or tribal administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(d) A record relating to a case or matter may be disseminated to an actual or potential party of his or her attorney, or a third party neutral, for the purpose of negotiation or discussion on such matters as settlement of the case or discussion on such matters as settlement of the case or matter, and for formal or informal discovery proceedings;

(e) A record relating to a case or matter that has been referred by an agency for investigation, civil or criminal action, enforcement or defense, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter, or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(f) A record relating to a case or matter may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(g) A record may be disseminated to a foreign country, through the Department of Justice Civil Division, United States Department of State, or directly to the representative of such country, to the extent necessary to assist such country in general crime prevention, the pursuit of civil or criminal judicial actions or general civil regulatory or administrative actions, or to provide investigative leads to such country, or assist in the location and/or returning of witnesses and other evidence;

(h) A record, or facts derived from it, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Environment and Natural Resources Division is authorized to appear when the United States, or any of its agencies or subdivisions, is a party to litigation, and the Environment and Natural Resources Division has determined that such records are arguably relevant to the litigation;

(i) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 (Department of Justice regulations setting forth guidelines for disclosure of information to the media) may be made available from this system of records unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(j) A record may be disseminated to a federal, state, or local agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) Pursuant to Subsection b(12) of the Privacy Act, records relating to an individual who owes an overdue debt to the United States may be disseminated to a federal agency which employs the individual; a consumer reporting agency; a federal, state, local or foreign agency; or the Internal Revenue Service (IRS);

(l) Information contained in this system of records may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the

information on the behalf of and at the request of the individual who is the subject of the records, even if the information would not otherwise be available under the Freedom of Information Act, 5 U.S.C. 552.

(m) Records may be disclosed to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(n) Information may be released to complainants or victims to the extent necessary to provide such persons with information and explanations concerning the progress or results of the investigation or case arising from their complaint or involvement as a victim.

(o) Timekeeping records may be disclosed to opposing parties and to courts in litigation regarding litigation costs.

Disclosure to consumer reporting agencies: See Routine Use (k) listed above.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records of the system: Storage: All information, except that specified in this paragraph, is recorded on computer files or basic paper/cardboard material that is stored in file folders, file cabinets, shelves, or safes. Some material is recorded and stored on other data processing storage forms.

Retrievability: Information is retrieved primarily by name of the case or person, case number, complaint number or court docket number. Information within this system of records may be accessed by Environment and Natural Resources Division employees by means of the Case Management System (CMS) or successor systems.

Safeguards: Information in the system is both confidential and nonconfidential and located in file cabinets in the Environment and Natural Resources Division offices in Washington, D.C., and field office locations. Information also is located in litigation support contract document centers and off-site storage locations. Confidential materials are in locked file drawers and safes, and nonconfidential materials are in unlocked file drawers. Offices are secured by either Federal Protective Service or private building guards. Information that is retrievable by Environment and Natural Resources Division personnel trained to access the Case Management System (CMS) or the time-keeping system or successor systems within various Environment and Natural Resources Division offices is password protected and required access to the Department's secure Justice Consolidated Office Automation Network (JCON).

Retention and Disposal: Records are retained or disposed of after a case is closed in accordance with a retention and disposal schedule approved by the National Archives and Records Administration. The time period that records are maintained ranges from 10 years after a matter is closed to permanently.

System manager(s) and address: The System Manager is the Assistant Director, Office of Information Technology, in coordination with the Office of Planning and Management's Records Management Unit.

Notification Procedure: Address inquiries to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Policy, Legislation and Special Litigation Section; PO Box 4390; Ben Franklin Station; Washington, DC 20044–4390.

Record Access Procedures: Portions of this system are exempt from disclosure and contest by 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. Submit in writing all requests for access, and clearly mark the envelope and letter, ''Privacy Act Access Request.'' Include in the request your full name, date and place of birth, case caption, or other information which may assist in locating the records you seek. Also include your notarized signature and a return address. Direct all access requests to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Policy, Legislation and Special Litigation Section; PO Box 4390, Ben Franklin Station, Washington, DC 20044–4390.

Contesting Record Procedures: Portions of this system are exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). An individual may contest those records that are not subject to exemption. A determination whether a record is exempt from contest shall be made at the time a request for contest is received. If you wish to contest or amend information maintained in the system, direct your request to FOIA/PA Coordinator stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information you seek.

Record Source Categories: Sources of information contained in this system include, but are not limited to investigative reports of client agencies of the Department of Justice; discovery materials; other than non-Department of Justice forensic reports; statements of witnesses and parties; verbatim transcripts of depositions and court proceedings; data, public reports, memoranda and reports from the court and agencies thereof; and the work product of Environment and Natural Resources Division Attorneys, Department of Justice attorneys, investigators, staff, and legal assistants working on particular cases or matters.

Exemptions claimed for the system: The Privacy Act authorizes an agency to promulgate rules to exempt any system of records (or part of a system of records) from certain Privacy Act requirements, if the system of records is maintained by an agency which performs as its principal function any activity pertaining to the enforcement of criminal laws (5 U.S.C. 552a(j)(2)); it is investigatory material compiled for law enforcement purposes (5 U.S.C. 552a(k)(2)); or it is required by Executive Order to be kept secret in the interest of national defense or foreign policy (5 U.S.C. 552a(k)(1).

Under these authorities, the Attorney General has promulgated rules to exempt those records in this system that pertain to the enforcement of criminal laws, that are investigatory materials compiled for law enforcement purposes, or that are classified secret by an Executive Order, from the following Privacy Act requirements: (1) The requirement under (c)(3) to make available to the individual named in the record an accounting of the circumstances under which records about the individual were disclosed; (2) the requirement under (e)(1) to maintain only such information about an individual that is relevant and necessary to accomplish a purpose of the agency; and (3) the requirement under (f) to establish agency procedures to respond to an individual's request for information about himself. The Attorney General also has promulgated a rule to exempt records in this system compiled for criminal enforcement purposes from these additional requirements: (1) The requirement under (c)(4) to inform any party or agency that received an individual's records about any subsequent corrections made to the record; (2) the requirement under (e)(2) to collect information to the greatest extent practicable directly from the individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs; (3) the requirement under (e)(3) to inform each individual from whom information is collected of the authority for the information the principal purposes for the information, the routine uses, and

the effects, if any, of not providing the information; (4) the requirement under (e)(5) to maintain all records with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual, (5) the requirement under (e)(8) to make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when that process becomes a matter of public record; and (6) the authority under (g) providing that individuals may bring a civil action against the agency for violations of the Privacy Act.

[FR Doc. 00–3116 Filed 2–22–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB review; comment request

Dated: February 16, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz (202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King (202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Reinstatement, without change.

Agency: Employment and Training Administration.

Title: Labor Condition Application and Requirements for Employer Using Nonimmigrants on H-1B Visas.

OMB Number: 1205–0310.

Affected Public: Individuals or households; State, Local, or Tribal governments, business or other for-profit; not-for-profit institution.

Activity	Number of respondents	Frequency	Average time per response (Min)	Total respondent burden (Hrs.)
Review Instructions	200,000	On Occasion	15	50,000
Compile Information/File	200,000	On Occasion	30	100,000
Complete/Submit/Post	200,000	On Occasion	15	50,000
File Complaints	200,000	On Occasion	15	50
Total	200,000	On Occasion	60	200,000

Total Annualized capital/startup costs: $0

Total annual costs (operating/maintaining systems or purchasing services): $0

Description: The application form and other requirements in these regulations for employers seeking to use H-1B non-immigrants in specialty occupations and as fashion models will permit the Department of Labor to meet its statutory responsibilities for program administration, management, and oversight.

Ira L. Mills

Departmental Clearance Officer.

[FR Doc. 00–4213 Filed 2–22–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Identification of Independent Contractors

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general pubic and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before April 24, 2000.

ADDRESSES: Send comments to Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to dhill@msha.gov, along with an original printed copy. Ms. Hill can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and

Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Hill can be reached at dhill@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 45.3 provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for service of documents upon the contractor. Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act and are responsible for violations of the Act committed by them or their employees.

Although Independent contractors are not required to apply for the identification number, they will be assigned one by MSHA the first time they are cited for a violation of the Mine Act. MSHA uses the information to issue a permanent MSHA identification number to the independent contractor.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Identification of Independent Contractors. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

MSHA uses the information to issue a permanent MSHA identification number to the independent contractor. This number allows MSHA to keep track of a contractor's violation history so that appropriate civil penalties can be assessed for violations of the Mine Act or its accompanying mandatory health and safety standards.

III. Current Actions

MSHA is requesting that the approval be extended for three years.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Identification of Independent Contractors.

OMB Number: 1219–0043.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 45.3.

Total Respondents: 1,687.

Frequency: On occasion.

Total Responses: 1,687.

Average Time per Response: 11 minutes.

Estimated Total Burden Hours: 191 hours.

Estimated Total Burden Cost: $368.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 16, 2000.

George M. Fresak,

Director, Program Evaluation and Information Resources.

[FR Doc. 00–4266 Filed 2–22–00; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company (Quad Cities Nuclear Power Station, Units 1 and 2); Order Approving Application Regarding Change in Shareholders of MidAmerican Energy Holdings Company

I

MidAmerican Energy Company (MidAmerican) owns a 25-percent interest in Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). Commonwealth Edison Company (ComEd) owns the remaining 75-percent share of Quad Cities. In connection therewith, MidAmerican and ComEd hold Facility Operating Licenses Nos. DPR–29 and DPR–30 for Quad Cities issued by the U.S. Atomic Energy Commission pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50) on December 14, 1972. Under these licenses, only ComEd, acting for itself and as agent and representative of MidAmerican, has the authority to operate Quad Cities. Quad Cities is located in Rock Island County, Illinois.

II

By application transmitted under two cover letters dated November 15, 1999, as supplemented on January 3, January 5, and February 14, 2000, and which cross referenced a submittal dated November 2, 1999, MidAmerican and ComEd submitted a request for approval by the U.S. Nuclear Regulatory Commission (NRC or Commission) to the extent a proposed change in the shareholders of MidAmerican Energy Holdings Company (MEHC), the parent company of MidAmerican, would effect an indirect transfer of the Quad Cities licenses, as held by MidAmerican, within the scope of 10 CFR 50.80. The change involves the acquisition of all of the now publicly traded, widely held stock of MEHC, by a small group of investors. This group of investors consists of Berkshire Hathaway, Inc., and/or subsidiaries thereof (Berkshire); David L. Sokol, the Chairman and Chief Executive Officer of MEHC; and Walter Scott, MEHC's largest individual shareholder, and/or certain Scott family interests; and potentially other members of MEHC's management. The application indicates that following the proposed change in MEHC shareholders, Berkshire's investment in MEHC voting common stock will be 9.9% of shares outstanding, the investment associated with Mr. Scott will be approximately 88.1%, and Mr. Sokol will hold approximately 2% of the voting common stock of MEHC; the latter two percentages being subject to slight variation in the event of participation by other members of MEHC management. The overall equity holdings, taking into account convertible preferred stock, would be approximately 81% for Berkshire and 18% for Mr. Scott and associates, with less than 1% for all others. Mr. Scott will be able to appoint four directors to the MEHC board, while Berkshire will be able to appoint two directors to the board, which will comprise ten members. According to the application, following the change in MEHC shareholders MidAmerican would continue to be a 25 percent minority owner and possession-only licensee of Quad Cities and would remain an ''electric utility'' as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail.

Notice of the application and an opportunity for a hearing was published in the **Federal Register** on December 29, 1999 (64 FR 73079). No hearing requests or written comments on the application were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, the supplemental information and other information before the Commission, the NRC staff has determined that the above proposed shareholder transaction involving MEHC stock will not affect the qualifications of MidAmerican as a holder of the licenses, and that the indirect transfer of the licenses, as held by MidAmerican, to the extent such would be effected under 10 CFR 50.80 by the proposed shareholder transaction, would be otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. These findings are supported by a Safety Evaluation dated February 15, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed shareholder transaction is approved, subject to the following condition: Should the proposed shareholder transaction not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

For further details with respect to this Order, see the application for consent concerning the proposed shareholder transaction submitted under two cover letters dated November 15, 1999, as supplemented on January 3, January 5, and February 14, 2000, and the related Safety Evaluation dated February 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L. Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 15th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4253 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263; License No. DPR–22]

Northern States Power Company (Monticello, Unit No. 1); Exemption

I

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of the Monticello Nuclear Generating Plant (the facility) at steady state core power levels not in excess of 1775 megawatts thermal. The facility consists of a boiling water reactor, located in Wright County at the licensee's site in Wright and Sherburne Counties, Minnesota. The license provides, among other things, that Monticello is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Pursuant to 10 CFR 55.59(a)(1), each licensed operator is required to successfully complete a requalification program developed by the licensee that has been approved by the Commission. This program is to be conducted for a continuous period not to exceed 24 months in duration and, upon its conclusion, must be promptly followed by a successive requalification program. In addition, pursuant to 10 CFR 55.59(a)(2), each licensed operator must also pass a comprehensive requalification written examination and an annual operating test.

III

By letter dated January 19, 2000, NSP requested an exemption under 10 CFR 55.11 from the requirements of 10 CFR 55.59(a)(2). The schedular exemption requested will extend the current Monticello requalification program from March 9, 2000, to May 12, 2000. The requested exemption would constitute a one-time extension of the requalification program duration.

The regulation at 10 CFR 55.11 states that ''The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.''

IV

The Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to NSP from the requirements in 10 CFR 55.59(a)(1) and (a)(2) is authorized by law and will not endanger life or property and is otherwise in the public interest. To require scheduling of the comprehensive examination of the licensee's operators and staff in order to support the 24-month requalification cycle could have a detrimental effect on the public interest, because it could prolong the current plant refueling outage without a net benefit to safety. Further, this one-time exemption will allow additional operator support during plant shutdown conditions, which will provide a safety enhancement during plant shutdown operations and post-maintenance testing. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant throughout the transitional period via continuation of the current satisfactory licensed operator requalification program. Accordingly, the Commission hereby grants NSP an exemption, on a one-time only basis, from the schedular requirements of 10 CFR 55.59(a)(1) and (a)(2) to allow the current Monticello requalification program to be extended beyond 24 months, not to exceed 27 months, and to expire on May 12, 2000.

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on February 16, 2000 (65 FR 7897).

This exemption is effective upon issuance. This exemption expires on May 12, 2000.

Dated at Rockville, Maryland this 16th day of February 2000.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Directory, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4254 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3); Order Approving Transfer of Licenses and Conforming Amendments

I

PECO Energy Company (PECO), Public Service Electric and Gas Company (PSE&G), Delmarva Power and Light Company, and Atlantic City Electric Company are the joint owners of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom), located in York County, Pennsylvania. They hold Facility Operating Licenses Nos. DPR–44 and DPR–56 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on October 25, 1973, and July 2, 1974, respectively, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Under these licenses, PSE&G (currently owner of 42.5 percent of each Peach Bottom unit) is authorized (along with the other joint owners) to possess Peach Bottom Units 2 and 3.

II

By an application dated July 23, 1999, which was supplemented on October 22, 1999 (collectively referred to as the application herein), PSE&G requested approval of the proposed transfer of PSE&G's rights under the operating licenses for both Peach Bottom units to a new, affiliated nuclear generating company, PSEG Nuclear Limited Liability Company (PSEG Nuclear). PSEG Nuclear would assume title to PSE&G's interest in both units following approval of the proposed license transfers. No physical changes or change in the day-to-day management and operations of the Peach Bottom units are proposed in the application. The proposed transfers do not involve any change with respect to the exclusive operating authority or joint ownership interest in Peach Bottom Units 2 and 3 held by PECO, or the non-operating ownership interest in Peach Bottom Units 2 and 3 held by Delmarva Power and Light Company and Atlantic City Electric Company.

PECO, as the operating licensee for Peach Bottom Units 2 and 3, submitted a related request for approval of conforming license amendments to reflect the proposed license transfers to PSEG Nuclear. The amendments would replace references to Public Service Electric and Gas Company, or PSE&G, with PSEG Nuclear. The request for amendments, dated July 1, 1999, and supplemented August 11, and September 1, 1999, was made by PECO in anticipation of PSE&G's transfer application.

Approval of the transfers and conforming license amendments was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for transfer approval as well as the request for amendments and an opportunity for a hearing was published in the **Federal Register** on August 5, 1999 (64 FR 42728). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the licenses for Peach Bottom Units 2 and 3 to the same extent the licenses are now held by PSE&G and that the transfer of the licenses, as previously described, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated February 14, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the license transfers referenced above are approved, subject to the following conditions:

1. For purposes of ensuring public health and safety, PSEG Nuclear shall provide decommissioning funding assurance, to be held in decommissioning trust(s) for Peach Bottom Units 2 and 3 upon the transfer of the respective licenses to PSEG Nuclear, of no less than the following amounts: Peach Bottom Unit 2: $92.3 million; Peach Bottom Unit 3: $88.1 million. Any amounts held in any decommissioning trust(s) maintained by PSE&G for Peach Bottom Units 2 and 3 after such license transfers subject to the limitations in Paragraph 2 below, may be credited towards the amounts required under this paragraph.

2. Any decommissioning trust funds established by PSE&G for Peach Bottom Units 2 and 3 to comply with NRC regulations shall be transferred to PSEG Nuclear upon the transfer of the respective licenses, or following the transfer of the licenses but no later than 1 year from the date of issuance of this Order. In the event the decommissioning trust funds are not transferred by PSE&G to PSEG Nuclear at the time the license transfers are effected, PSE&G shall remain subject to the NRC's authority under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning such decommissioning trust funds, until such time as the decommissioning trust funds are transferred to PSEG Nuclear.

3. PSEG Nuclear shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application for the transfer of the Peach Bottom Units 2 and 3 licenses and the requirements of this Order and the related safety evaluation.

4. If the assets of any decommissioning trusts maintained by PSE&G for Peach Bottom Units 2 and 3 are retained in such trusts following the transfer of the respective licenses to PSEG Nuclear instead of being transferred to any trusts established by PSEG Nuclear, PSE&G shall maintain the assets as retained in such trusts in accordance with the application for the transfer of the licenses.

5. The decommissioning trust agreements for Peach Bottom Units 2 and 3 shall provide that:

(a) The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of each unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

(b) Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(c) No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(d) The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

(e) The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

6. PSEG Nuclear shall not take any action that would cause PSEG Power LLC or its parent companies to void, cancel, or diminish the commitment to fund an extended plant shutdown as represented in the application for approval of the transfer of the Peach Bottom Units 2 and 3 licenses from PSE&G to PSEG Nuclear.

7. Before the completion of the transfer of the interests in Peach Bottom Units 2 and 3 to PSEG Nuclear as previously described herein, PSEG Nuclear shall provide to the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that PSEG Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

8. After receipt of all required regulatory approvals of the subject transfer, PSE&G shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer to no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments for Peach Bottom Units 2 and 3 that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the transfer application dated July 23, 1999, as supplemented October 22, 1999, and a related application dated June 4, 1999, pertaining to the Hope Creek and Salem facilities, incorporated by reference in the submittal of July 23, 1999, and the request for conforming amendments dated July 1, 1999, as supplemented August 11 and September 1, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 16th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4257 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Philadelphia Electric Company (PECO Energy Company); Delmarva Power and Light Company, Atlantic City Electric Company, (Salem Nuclear Generating Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

I.

Public Service Electric and Gas Company (PSE&G), Philadelphia Electric Company (PECO Energy Company), Delmarva Power and Light Company, and Atlantic City Electric Company are the joint owners of the Salem Nuclear Generating Station, Units 1 and 2 (Salem), located in Salem County, New Jersey. They hold Facility Operating Licenses Nos. DPR–70 and DPR–75 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 13, 1976, and May 20, 1981, respectively, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Under these licenses, PSE&G (currently owner of 42.59 percent of each Salem unit) is authorized to possess, use, and operate Salem Units 1 and 2.

II.

By application dated June 4, 1999, as supplemented October 22, 1999 (collectively referred to as the application herein), PSE&G requested approval of the proposed transfer of PSE&G's rights under the operating licenses for both Salem units to a new, affiliated nuclear generating company, PSEG Nuclear Limited Liability Company (PSEG Nuclear). PSEG Nuclear would assume title to PSE&G's interest in both units following approval of the proposed license transfers and would become exclusively responsible for the operation and maintenance of and the performance of eventual decommissioning activities for Salem Units 1 and 2. No physical changes or significant change in the day-to-day management and operations of the Salem units are proposed in the application. The proposed transfers do not involve any change with respect to the non-operating ownership interest in Salem Units 1 and 2 held by PECO Energy Company, Delmarva Power and Light Company, and Atlantic City Electric Company.

PSE&G also requested approval of conforming license amendments to reflect the transfers. The amendments would replace references to Public Service Electric and Gas Company, or PSE&G, with PSEG Nuclear.

Approval of the transfers and conforming license amendments was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 30, 1999 (64 FR 35192). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application and other information

before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the license for each Salem unit to the same extent the licenses are now held by PSE&G, and that the transfer of the licenses, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated February 16, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the license transfers referenced above are approved, subject to the following conditions:

1. For purposes of ensuring public health and safety, PSEG Nuclear shall provide decommissioning funding assurance, to be held in decommissioning trust(s) for Salem Units 1 and 2 upon the transfer of the respective licenses to PSEG Nuclear, of no less than the following amounts: Salem Unit 1: $113.5 million, Salem Unit 2: $88.8 million. Any amounts held in any decommissioning trust(s) maintained by PSE&G for Salem Units 1 and 2 after such license transfers subject to the limitations in Paragraph 2 below, may be credited towards the amounts required under this paragraph.

2. Any decommissioning trust funds established by PSE&G for Salem Units 1 and 2 to comply with NRC regulations shall be transferred to PSEG Nuclear upon the transfer of the respective licenses, or following the transfer of the licenses but no later than one year from the date of issuance of this Order. In the event the decommissioning trust funds are not transferred by PSE&G to PSEG Nuclear at the time the license transfers are effected, PSE&G shall remain subject to the NRC's authority under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning such decommissioning trust funds, until such time as the decommissioning trust funds are transferred to PSEG Nuclear.

3. PSEG Nuclear shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application for the transfer of the Salem Units 1 and 2 licenses and the requirements of this Order and the related safety evaluation.

4. If the assets of any decommissioning trust maintained by PSE&G for Salem Units 1 and 2 are retained in such trust following the transfer of the respective license to PSEG Nuclear instead of being transferred to any trust established by PSEG Nuclear, PSE&G shall maintain the assets as retained in such trust in accordance with the application for the transfer of the licenses.

5. The decommissioning trust agreement for Salem Units 1 and 2 shall provide that:

(a) The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of each unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

(b) Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(c) No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(d) The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

(e) The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

6. PSEG Nuclear shall not take any action that would cause PSEG Power LLC or its parent companies to void, cancel, or diminish the commitment to fund an extended plant shutdown as represented in the application for approval of the transfer of the Salem Units 1 and 2 licenses from PSEG to PSEG Nuclear.

7. Before the completion of the transfer of the interest in Salem Units 1 and 2 to PSEG Nuclear as previously described herein, PSEG Nuclear shall provide to the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that PSEG Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

8. After receipt of all required regulatory approvals of the subject transfer, PSEG shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform each Salem license to reflect the subject license transfers are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 4, 1999, and the supplement dated October 22, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available documents will be accessible electronically from the ADAMS Public Library component on the NRC Web site *http://www.nrc.gov* (the Electronic Reading Room).

Dated: Dated at Rockville, Maryland, this 16th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4255 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company, Atlantic City Electric Company (Hope Creek Generating Station); Order Approving Transfer of License and Conforming Amendment

I.

Public Service Electric and Gas Company (PSE&G) and Atlantic City Electric Company are the joint owners of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey. They hold Facility Operating License No. NPF–57 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on July 25, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Under this license, PSE&G (currently owner of 95 percent of HCGS) is authorized to act as agent for Atlantic City Electric Company and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

II.

By application dated June 4, 1999, as supplemented October 22, 1999 (collectively referred to as the application herein), PSE&G requested approval of the proposed transfer of PSE&G's rights under the operating license for HCGS to a new, affiliated nuclear generating company, PSEG Nuclear Limited Liability Company (PSEG Nuclear). PSEG Nuclear would assume title to PSE&G's interest in the facility following approval of the proposed license transfer and would become exclusively responsible for the operation and maintenance of, and the performance of eventual decommissioning activities for HCGS. No physical changes or significant change in the day-to-day management and operations of HCGS are proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interest in HCGS held by Atlantic City Electric Company.

PSE&G also requested approval of a conforming license amendment to reflect the transfer. The amendment would replace references to Public Service Electric and Gas Company, or PSE&G, with PSEG Nuclear.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 30, 1999 (64 FR 35193). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the license to the same extent the license is now held by PSE&G, and that the transfer of the license, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated February 14, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

1. For purposes of ensuring public health and safety, PSEG Nuclear shall provide no less than $159.0 million decommissioning funding assurance, to be held in decommissioning trust(s) for HCGS upon the transfer of the HCGS license to PSEG Nuclear. Any amounts held in any decommissioning trust(s) maintained by PSE&G for HCGS after such license transfer subject to the limitations in Paragraph 2 below, may be credited towards the amount required under this paragraph.

2. Any decommissioning trust funds established by PSE&G for HCGS to comply with NRC regulations shall be transferred to PSEG Nuclear upon the transfer of the license, or following the transfer of the license but no later than one year from the date of issuance of this Order. In the event the decommissioning trust funds are not transferred by PSE&G to PSEG Nuclear at the time the license transfer is effected, PSE&G shall remain subject to the NRC's authority under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning such decommissioning trust funds, until such time as the decommissioning trust funds are transferred to PSEG Nuclear.

3. PSEG Nuclear shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application for the transfer of the HCGS license and the requirements of this Order and the related safety evaluation.

4. If the assets of any decommissioning trust maintained by PSE&G for HCGS are retained in such trust following the transfer of the HCGS license to PSEG Nuclear instead of being transferred to any trust established by PSEG Nuclear, PSE&G shall maintain the assets as retained in such trust in accordance with the application for the transfer of the HCGS license.

5. The decommissioning trust agreement for HCGS shall provide that:

(a) The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

(b) Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except

for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(c) No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(d) The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

(e) The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

6. PSEG Nuclear shall not take any action that would cause PSEG Power LLC or its parent companies to void, cancel, or diminish the commitment to fund an extended plant shutdown as represented in the application for approval of the transfer of the HCGS license from PSE&G to PSEG Nuclear.

7. Before the completion of the transfer of the interest in HCGS to PSEG Nuclear as previously described herein, PSEG Nuclear shall provide to the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that PSEG Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

8. After receipt of all required regulatory approvals of the subject transfer, PSE&G shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 4, 1999, and the supplement dated October 22, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 16th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4256 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 29, 2000, through February 11, 2000. The last biweekly notice was published on February 9, 2000 (65 FR 6402).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 24, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 27, 1999.

Description of amendment request: The requested amendment proposes to increase the maximum allowable Service Water (SW) temperature used to determine operability of the Ultimate Heat Sink (UHS) from 95 °F to 97 °F. The amendment includes all the TS changes necessary as a result of new analyses performed to support the increase of the maximum allowable SW temperature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change increases the maximum allowable Service Water (SW) temperature, which is used to determine OPERABILITY of the Ultimate Heat Sink (UHS), from 95 °F to 97 °F. As a result of the new analyses to support the increase in SW temperature, the proposed change also decreases the required actuation setpoint for the Containment Pressure High High signal from 20 psig to 10 psig, decreases the closure time credited for the Main Feedwater

Isolation Valves (MFIVs) in the analysis from 80 seconds to 50 seconds, increases the required operating pressure for the Isolation Valve Seal Water (IVSW) and IVSW nitrogen bottle pressure from 44 psig to 44.6 psig, decreases the closure time for Main Steam Isolation Valves (MSIVs) credited in the analysis from 5 seconds to 2 seconds, and increases the peak calculated containment internal pressure for a large break Loss of Coolant Accident (LOCA), Pa, from 40 psig to 40.5 psig. In addition, the Containment Spray (CS) actuation circuitry will be modified to allow the CS pumps to be restarted after they have been stopped while the original actuation signal is present.

SW temperature is not itself an initiator of accidents evaluated in the Safety Analysis report (SAR). The components provided SW flow that are required to perform a safety-related function are designed to operate at temperatures above the temperatures to which SW will be increased. Therefore, these components are not more likely to fail and initiate an accident. The components have been shown to perform their intended safety related function with the higher SW temperatures. Containment analyses have been performed that show that containment integrity and equipment environmental qualification are maintained.

The modification to the Containment High High Pressure actuation setpoint will not increase the probability of an unwanted actuation. Changing the actuation setpoint will not change the reliability of this function. The Containment Pressure High High Pressure function will (1) initiate Containment Spray sooner, which will mitigate the pressure and temperature transient sooner, and (2) isolate leakage of radioactivity from containment through ''essential'' process lines sooner in an accident. Also, the lower actuation setpoint, in conjunction with other analysis assumptions, has been evaluated to result in a slight decrease (−2 °F) in the large break LOCA Peak Cladding Temperature.

Crediting faster MFIV closure in the Main Steam Line Break (MSLB) containment analysis will not change the probability of MFIV failure or the probability that the MFIV will initiate an accident because a physical modification is not associated with the proposed change. (The physical modification is being implemented in accordance with 10 CFR 50.59). Since there is no physical modification, the amount of feedwater addition to containment during [an] MSLB if the Main Feedwater Regulating Valve (MFRV) fails [to] open will not change, although the amount calculated by the analysis will be reduced.

Crediting faster MSIV closure in the MSLB containment analysis will not change the probability of MSIV failure or the probability that the MSIV will initiate an accident because a physical modification is not involved. Since there is no physical modification, the amount of blowdown from the unaffected SGs [steam generators] and the amount of radioactivity released to the environment by [an] MSLB will not be adversely affected, although the amount calculated by the analysis will be reduced. Crediting a faster closure time does not require crediting a faster MSIV opening time because of the valve design, and opening [an] MSIV is not postulated for an analyzed accident.

Changing the minimum operating pressure of the IVSW components does not involve a physical modification, hence, will not affect the probability that components will fail or initiate an accident. The IVSW system will perform its containment isolation function by providing a water seal at the higher pressure calculated by the new large break LOCA containment analysis.

The Containment Leakage Rate Testing (CLRT) program historically has performed integrated leak rate testing and local leak rate testing at pressures higher than the peak containment pressure calculated by the new large break LOCA containment analysis. The components which are tested by the CLRT program are designed for operation at a pressure higher than the pressure to which they are tested. The current CLRT program ensures that the containment leakage is less than that used to calculate the doses for a large break LOCA accident.

The modification to the CS actuation circuitry will not affect the reliability of the circuit. The modification will be tested periodically to ensure reliability and to confirm the capability of restoring CS after being blocked. Blocking the actuation circuitry will be procedurally controlled and will allow the CS pumps to be restarted, after being stopped, when an actuation signal is present. The analysis results show that containment pressure and temperature are within design limits when CS is stopped for the switchover.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The components provided SW flow have been shown to perform their safety related function with the higher service temperature, hence, will not exhibit any new type of failure mechanism or mode as a result of the increased temperatures.

Decreasing the Containment High High Pressure actuation setpoint only changes the time at which the signal is generated, not how it is generated, or how the actuated equipment responds to the signal, hence, will not introduce any new types of failures.

Crediting faster MFIV and MSIV stroke times in the MSLB containment analysis does not involve a physical modification, hence, can not introduce any new failure modes.

The IVSW components and the components tested by the CLRT program are designed for pressures that are higher than the pressures at which they are proposed to operate and be tested. As the functions of these components are not changing, and the components are capable of withstanding the higher pressure, a higher operating or testing pressure will not create any new failure mechanisms or accidents.

The modification to the CS actuation circuitry will be tested periodically to ensure proper operation and reliability of the circuit. Even if one of the blocking circuits should fail during operation, a single failure of a CS pump has been considered in the containment analysis, hence, is not a new type of failure or accident.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

Containment structural integrity, containment leakage, fuel cladding, equipment environmental qualification, EDG electrical capacity, and UHS capability were considered to determine if the proposed change involves a significant reduction in a margin of safety.

Containment pressure is limited to the design pressure of 42 psig to maintain structural integrity. A structural integrity test at 115% of the design pressure (48.3 psig) has confirmed the containment's structural capability. The new containment analyses for large break LOCA and MSLB using [an] SW temperature of 100 °F show that the containment pressure does not exceed 42 psig. The margin of safety for containment is not reduced by the proposed change because the design pressure is not exceeded. The containment leakage rate, La, is limited to 0.1% of the containment air weight per day. La is based on the peak calculated containment internal pressure, Pa, for the design basis LOCA. The offsite doses resulting from an accident are based on La. If containment leakage does not exceed La, the margin of safety is not reduced. The leakage rates for Type A, B, and C containment penetrations are measured periodically throughout plant life to ensure that containment leakage is [less than or equal to] La. The leakage rate acceptance criteria are [less than or equal to] 0.75 L for Type A tests, and [less than or equal to] 0.60 La for Type B and Type C tests. As a result of using [an] SW temperature of 97 °F in the new large break LOCA containment analysis, Pa has changed from 40 psig to 40.5 which changes the pressure at which the Type A, B, and C containment penetration leakage is measured. Historically, containment leakage rate testing has been performed at the containment design pressure of 42 psig or higher. The margin of safety related to containment leakage is not reduced by the proposed change because containment leakage is [less than or equal to] La.

Fuel cladding integrity is evaluated by determining the effect on the Peak Cladding Temperature (PCT) and the Departure to Nucleate Boiling Ratio (DNBR) for postulated accident. The PCT for a large break LOCA changes by −2 °F as a result of the proposed change including associated changes. The DNBR for a non-limiting case of the MSLB changes, but the margin to the DNBR limit is very large. Therefore, fuel cladding integrity is not adversely affected.

Safety-related equipment is potentially required to function in an adverse environment during and following an accident. Using [an] SW temperature of 97 °F, the new large break LOCA and MSLB containment analyses yield temperature and pressure profiles show that the temperature and pressure profiles for equipment required to operate during and following an accident

are qualified. The margin of safety related to equipment environmental qualification is not reduced by the proposed change because equipment required to operate during and following an accident are environmentally qualified.

The Emergency Diesel Generators (EDGs) provide emergency electrical power to run safety-related equipment following an accident that is accompanied by a loss of offsite power. The EDGs are rated at 110% capacity for 2 hours out of each 24 hours and tested between 106% to 110% for at least 1.75 hours. Since the EDG can provide 110% for 1.75 hours, the margin of safety is not reduced. Using [an] SW temperature of 97 °F, a calculation shows that adequate cooling is provided for the EDG to produce 110% electrical output.

The UHS is required to provide cooling water for at least 22 days following a design basis accident. The UHS is able to provide cooling water for 22.1 days at a temperature of 100 °F. Therefore, the cooling capability of the UHS would not be adversely affected.

Based on the above, it may be concluded that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 22, 1999.

Description of amendment request: The proposed amendment would expand the Core Operating Limits Report (COLR) and relocate reactor coolant system related cycle-specific parameter limits from the technical specifications (TSs) and include them in the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are programmatic and administrative in nature which do not physically alter safety-related systems, nor affect the way in which safety-related systems perform their functions. The proposed changes remove cycle-specific parameter limits from TS 3.4.1 and relocate them to the COLRs which do not change plant design or affect system operating parameters. In addition, the minimum limit for [Reactor Coolant System] RCS total flow rate is being retained in TS 3.4.1 to assure that a lower flow rate than reviewed by the NRC will not be used. The proposed changes do not, by themselves, alter any of the parameter limits. The removal of the cycle-specific parameter limits from the TS does not eliminate existing requirements to comply with the parameter limits. The existing TS Section 5.6.5b, COLR Reporting Requirements, continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies. The existing TS Section 5.6.5c, COLR Reporting Requirements, continues to ensure that applicable limits of the safety analyses are met. Further, more specific requirements regarding the safety limits (*i.e.,* [Departure from Nucleate Boiling Ratio] DNBR limit and peak fuel centerline temperature limit) are being imposed in TS 2.1.1, ''Reactor Core Safety Limits,'' replacing the Reactor Core Safety Limits (RCSL) figure which are consistent with the values stated in the Updated Final Safety Analysis Report (UFSAR).

Although the relocation of the cycle-specific parameter limits to the COLRs would allow revision of the affected parameter limits without prior NRC approval, there is no significant effect on the probability or consequences of an accident previously evaluated. Future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits. The differences would not be significant and would be bounded by the existing requirement of TS Section 5.6.5c to meet the applicable limits of the safety analyses.

The cycle-specific parameter limits being transferred from the TS to the COLRs will continue to be controlled under existing programs and procedures. The UFSAR accident analyses will continue to be examined with respect to changes in the cycle-dependent parameters obtained using NRC reviewed and approved reload design methodologies, ensuring that the transient evaluation of new reload designs are bounded by previously accepted analyses. This examination will continue to be performed pursuant to 10 CFR 50.59 requirements ensuring that future reload designs will not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, the proposed changes do not allow for an increase in plant power levels, do not increase the production, nor alter the flow path or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes do not change the types or increase the amounts of any effluents released offsite.

Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes that retain the minimum limit for RCS total flow rate in the TS, and that relocate certain cycle-specific parameter limits from the TS to the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters, do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, other than their relocation to the COLRs. There are no setpoints affected by the proposed changes at which protective or mitigative actions are initiated. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Relocation of cycle-specific parameter limits has no influence or impact on, nor does it contribute in any way to the possibility of a new or different kind of accident. The relocated cycle-specific parameter limits will continue to be calculated using the NRC reviewed and approved methodology. The proposed changes do not alter assumptions made in the safety analysis and operation within the core operating limits will continue.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes do not physically alter safety-related systems, nor does it effect the way in which safety-related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed changes. Therefore, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As the proposed changes to relocate cycle-specific parameter limits to the COLRs will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameter, and the plant will continue to operate within prescribed limits.

The development of cycle-specific parameter limits for future reload designs will continue to conform to NRC reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that plant operation within cycle-specific parameter limits will not involve a significant reduction in the margin of safety.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas

Date of amendment request: September 17, 1999.

Description of amendment request: The proposed amendment would change the Arkansas Nuclear One, Unit 2 (ANO–2) heavy load handling requirements and transportation provisions to permit the movement of the original and replacement steam generators through the ANO–2 containment construction opening during the steam generator replacement outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

During the 2R14 refueling outage/steam generator replacement outage, the OSGs [original steam generators] and the RSGs [replacement steam generators] will be moved between the new steam generator storage area/original steam generator storage facility and the runway beam support system (RBSS)/outside lift system (OLS). The RBSS/OLS is the structure used to rig the SGs [steam generators] in and out of the reactor containment building. In consideration of the magnitude of the loads being handled, the RBSS, OLS and transporters are of a robust, rugged design, proven by many prior steam generator replacements and other heavy load handling operations. However, due to the location of safety related underground structures, systems, and components (SCCs) in the vicinity of the RBSS/OLS and along the steam generator (SG) haul route, potential load handling accidents along the load paths must be considered for their effects on the SCCs. At ANO–2, the ground cover over several buried SSCs is not sufficient to be able to rule out the potential for a load drop to damage or cause failure of these SCCs. The functions of the SSCs in question are as support systems to the ANO–1 [Arkansas Nuclear One, Unit 1] and ANO–2 emergency diesel generators and the ANO–1 service water system. The fire protection system, a non-safety related system, was also considered. Existing plant procedures adequately address the scenario in question for the fire protection system.

The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. The possibility of drops associated with other external events, such as tornadoes, high winds, and tornado missiles will be substantially minimized by procedures that prevent load handling under these weather conditions.

With ANO–2 defueled, the impact on ANO–2 due to loss of the emergency diesel generators fuel oil transfer system will be minimal. Long term actions to provide makeup water to the spent fuel pool may be necessary, but no immediate actions are required.

For ANO–1, a steam generator drop could render both diesel generators inoperable due to the loss of the fuel oil transfer system, and the emergency cooling pond inoperable due to the loss of the service water return line to the pond. Since ANO–1 is expected to be at full power operation, these conditions would require prompt action in accordance with technical specifications. Immediately following a drop from the OLS or from the transporter in the vicinity of the OLS, where damage to these systems is possible, ANO–1 will begin a shutdown and cooldown to cold shutdown conditions. In conjunction with the unit shutdown, contingency actions to provide temporary connections from the fuel oil storage facility to the ANO–1 emergency diesel generator day tanks, and temporary power to the fuel transfer pumps would be implemented.

The ability of ANO–1 to safely respond to analyzed events would be undiminished with the possible exception of the functions affected by the damaged equipment. With the compensatory measures to be established prior to the steam generator handling operations, and with the planned responses to a steam generator drop, the support system functions of the diesel generators and the service water system can be assumed to be maintained following the drop. Therefore, the drop will not affect the consequences of any analyzed event.

While the drop of a steam generator could cause damage to some safety related plant equipment, the failures of these components are not precursors to any analyzed accident. The drop of a steam generator will not have any other impact on plant equipment, and thus will not induce any analyzed plant transient. It will, however, result in a malfunction of equipment important to safety of a different type than any previously evaluated. Based on the compensatory measures and the low likelihood of the event during SG movement, this temporary condition is considered to be acceptable. On these bases, it is concluded that the proposed load handling operations will not significantly increase the probability or the consequences of accidents previously analyzed.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

As noted in the response to the first question above, the only potential for a new or different kind of accident associated with this change request arises from a drop of a steam generator which is assumed to cause the loss of emergency power support systems for ANO–1. The cause of a SG drop is assumed to be a non-mechanistic failure of the RBSS/OLS (or associated rigging), a failure of the SG transporter leveling hydraulics, or a seismically-induced failure of the loaded RBSS/OLS or SG transporter. In the absence of a seismic event, there is no initiator for any consequential events (*e.g.,* loss of offsite power) other than those directly caused by impact of the SG. Given this scenario, the plant response to a SG drop event would be governed by the technical specifications and existing plant procedures.

If a SG drop is seismically-induced, the simultaneous loss of normal offsite power sources is also assumed in this case since these sources are not seismically qualified. While this event is very unlikely due to the low frequency of earthquakes and the small amount of time that a steam generator will be in a position to cause damage, Entergy [Operations, Inc.] will provide contingency plans and compensatory measures so that makeup to the ANO–2 spent fuel pool and fuel oil supply to the ANO–1 emergency diesel generators and transfer pump power supply are assured under any circumstances.

Availability of the redundant ANO–1 service water heat sink, the Dardanelle Reservoir, during a seismic event assures that an uninterrupted source of service water will be available to support shutdown cooling of ANO–1.

The proposed load handling plans will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

ANO–1 Technical Specification 3.7.1.C requires both EDGs [emergency diesel generators] to be operable when the reactor temperature is ≥200 °F. If this condition is not met, Limiting Condition for Operation 3.0.3 applies. It requires that within one hour, action shall be initiated to place the unit in an operating condition in which the specification does not apply by placing it, as applicable, in at least hot standby within the next 6 hours, at least hot shutdown within the following 6 hours, and at least cold shutdown within the subsequent 24 hours. The bases for technical specification 3.7.1.C indicate that these operability requirements ensure that an adequate, reliable power source is available for all electrical equipment during startup, normal operation, safe shutdown, and handling of all emergency situations. The bases for EDG operation also require at least a seven day total diesel oil inventory during complete loss of electrical power conditions.

The postulated loss of both trains of the ANO–1 EDG fuel oil transfer system due to a SG drop would require that ANO–1 be shut down. This situation could be considered to involve a reduction in the margin of safety, because a new common cause failure mechanism is being introduced by the movement of the SGs over the EDG fuel oil lines and transfer pump power cables. To restore the margin of safety and return the EDGs to functionality, temporary compensatory measures are being proposed.

Based on the above discussions, with the implementation of the proposed compensatory measures and the low likelihood of such an event, the failures caused by a SG drop event will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: August 18, 1999.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 4.4.5, ''Steam Generators,'' to note that the requirements for inservice inspection do not apply during the steam generator replacement outage (2R14), to delete inspection requirements associated with steam generator tube sleeving and repair limits, to extend the inspection interval to a maximum of once per 40 months provided the inspection results from the first inspection following the preservice inspection fall into the C–1 category, to revise the preservice inspection requirements on when the hydrostatic test and the eddy current inspection of the tubes would be performed, and to revise the reporting frequency of the results of steam generator tube inspections to within 12 months following completion of the inservice inspection. Related changes to the Bases would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The accidents of interest are a tube rupture, loss of coolant accident (LOCA) in combination with a safe shutdown earthquake and a steam line break in combination with a safe shutdown earthquake. A reduction in tube integrity could increase the possibility of a tube rupture accident and increase the consequences of a steam line break or LOCA. The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code], Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action if tube degradation is present. The ASME [Code], Section XI basis for the 40% through wall plugging limit is applicable to the replacement steam generators just as it was to the original steam generators. As a result there is no reduction in tube integrity for the replacement steam generators.

Addition of a ''Note'' to clarify that inservice inspection is not required during the steam generator replacement outage is an administrative change that provides clarification regarding inservice inspection requirements. The change in reporting requirements is also an administrative change. The requirements for inservice inspection or the plugging limit for the tubes are not altered by these administrative changes. Additionally, changes were made to the bases to remove potentially misleading information. Bases changes are considered to be administrative in nature.

Elimination of the repair option and the associated references to repair of the original steam generator tubes is an administrative adjustment since the sleeve design is not applicable to the replacement steam generators. The elimination of the repair option does not alter the requirements for inservice inspection or reduce the plugging limit for the tubes.

The proposed change to extend the inspection interval to a maximum of once per 40 months is acceptable based on the use of the superior Alloy 690 tubing material. Significant industry knowledge has been gained from monitoring the performance of steam generators that have been replaced. Alloy 690 tubing material has proven to be superior to Alloy 600 in regard to corrosion resistance. Plants that have utilized Alloy 690 tubing in their replacement steam generators have not experienced corrosion-induced degradation.

A preservice eddy current inspection will be performed onsite prior to installation of the replacement steam generators. The orientation of the replacement steam generators during the eddy current exam will not impact the results. The hydrostatic test required by the ASME Code, Section III for the replacement steam generators is to be performed in the manufacturing facility and not as part of a reactor coolant system hydrostatic test. The post-repair leakage test required by the ASME Code, Section XI for an operating plant is performed at a much lower pressure. No evolutions subsequent to the replacement steam generator hydrostatic test are expected to occur that will change the condition of the tubes prior to operation. This change does not alter the requirement to perform a preservice inspection. As a result, an inservice inspection is not required during the steam generator replacement outage.

The requested ANO–2 [Arkansas Nuclear One, Unit 2] Technical Specification changes do not alter the requirements for tube integrity, tube inspection, or tube plugging limit. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes do not affect the design or function of any other safety-related component. There is no mechanism to create a new or different kind of accident for the replacement steam generators by eliminating repair criteria or by clarifying the applicable preservice and inservice inspection requirements because a baseline of tube conditions is established and plugging limits are maintained to ensure that defective tubes are removed from service. A change in inspection frequency has a negligible impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building. Changing the inspection frequency creates no new failure modes or accident initiators/precursors.

The requested ANO–2 Technical Specification changes do not alter the requirements for tube integrity, tube inspection or tube plugging limit. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The tubing in the replacement steam generators is designed and evaluated consistent with the margins of safety specified in the ASME Code, Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action to preserve the design margin if tube degradation is present.

Due to the superior Alloy 690 tubing material and the significant amount of industry knowledge and operating history with this improved tubing material, extending the inspection interval to a maximum of once per 40 months will still allow the integrity of the steam generator tubing to be ensured. The steam generator inspection program is not intended to provide an accident mitigation or assessment function; therefore, this change results in a neutral impact to the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: November 3, 1999.

Description of amendment request: The proposed amendment would increase the containment structural design pressure from 54 to 59 psig, revise Technical Specification (TS) Table 3.3–3 to add a containment spray actuation signal on high-high containment building pressure to terminate main feedwater and main steam flow from the unaffected steam generator, revise TS 3.6.1.4 and Figure 3.6–1 to change the allowable containment initial conditions to be consistent with analysis assumptions, revise TS 4.6.2.1 to increase the allowable containment spray pump degradation from 6.3% to 10.0%, and revise TS 6.15 to increase the calculated peak accident pressure in the containment leakage rate testing program from 54 to 58 psig and to clarify the allowable leakage rate. Related changes to the Bases would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The containment building will meet structural requirements for the higher design pressure. Except for the application of CSAS [Containment Spray Actuation Signal] in a different manner than used previously, the electrical penetration seal modifications and the containment cooling fan pitch change, increasing the containment structural design pressure is analytical. There are no changes to the allowable containment leakage rate. The increase in design pressure requires changes to the bases of the technical specifications and the SAR [Safety Analysis Report]. However, the peak accident and design pressures are below the failure pressure of any potentially affected system, structure or component. The change does not increase the probability of an accident previously evaluated. Since the containment leakage rate will not increase, the consequences of any previously evaluated accident will not increase. Therefore, the increase in design and peak pressures does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A structural integrity test (SIT) will be performed at 1.15 times the new design pressure of 59 psig. The SIT will provide acceptance criteria to assure that measured responses are within the limits predicted by analyses.

Additionally, evaluations of components within the containment building demonstrate that the components are qualified to the increased pressure.

Revising the allowable containment operating conditions provides more operating flexibility than current requirements. The proposed change is consistent with the assumptions made in the revised containment peak pressure analyses. Since the change only affects containment atmosphere conditions allowed during normal operation, it has no impact on the probability of initiation of a previously evaluated accident. Therefore, this aspect of the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in peak accident pressure will also require leakage rate testing of the containment structure and its penetrations to be performed at a 4 psi higher pressure than was required previously. Increasing the value of P_a in the containment leakage rate program changes the conditions for performing the tests. Since the revised value is well within the design capabilities of SSCs [systems, structures and components] that could be affected during the performance of the test, it will not weaken any of the protective barriers. Many past local leak rate tests have been performed at increased pressures (59–60 psig) with no significant difference in leakage results. Based on the leakage testing history, no problems are expected from the increase in P_a. Further, since these tests are not performed when the plant is operating, they have no impact on normal plant operation or the outcome of any previously evaluated accident. Therefore, this aspect of the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Revising the allowable degradation of the containment spray pump does not create the probability or consequences of an accident previously evaluated. Although the allowable pump degradation increased from 6.3% to 10%, analysis has shown that at 10% degraded, the pumps can deliver to containment the flow required at 59 psig and required to reduce containment pressure to an acceptably low level.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

Increasing the containment structural design pressure due [to] replacing the steam generators and the future 7–12% power uprate does not result in the failure of any system, structure or component during the progression of any previously evaluated accident. Therefore, the progression of the previously evaluated accidents will not change. Further, the change in design pressure is primarily administrative and does not affect the way the plant is operated. Therefore, this aspect of the change does not create the possibility of a new or different kind of accident from any previously evaluated.

The added CSAS actuating signal results in isolating the steam generators for events that generate a containment pressure high-high signal. CSAS, a four channel safety grade system, is part of the reactor protection system (RPS). The RPS is designed to reliably mitigate the effects of an accident. The only new condition created by this change would be the isolation of the steam generators upon an inadvertent actuation of CSAS. The possibility of steam generator isolation currently exists for an inadvertent MSIS [Main Steam Isolation Signal]. This condition is not considered to be an accident given the safety grade equipment available to mitigate this event and minor consequences due to its occurrence. The CSAS change will be implemented such that no new or failure modes or effects will be created that could cause a new or different kind of accident from any previously evaluated.

Revising the allowable containment operating conditions permits the plant to be operated for a wider range of containment atmospheric conditions. This aspect of the proposed change reduces the likelihood of a plant upset as a result of shutting the plant down in response to exceeding a limiting condition for operation. The proposed change is consistent with the assumptions made in the accident analysis and will insure that the containment peak pressure and temperature do not exceed design limits following design basis accidents. Therefore, this aspect of the change does not create the possibility of a new or different kind of accident from any previously evaluated.

Revising the value of P_a in the containment leakage rate program changes the conditions for performing the 10 CFR 50 Appendix J leak rate test. The revised value is well within the design capabilities of SSCs that could be affected during the performance of the test. Therefore, this aspect of the change does not create the possibility of a new or different kind of accident from any previously evaluated.

Revising the allowable degradation of the containment spray pump does not increase the possibility of a new or different kind of accident from any previously evaluated. Although the allowable pump degradation increased from 6.3% to 10%, analysis has shown that when degraded 10%, the pumps can deliver the required flow to the containment building at the increased containment pressure of 59 psig.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

Increasing the containment structural design pressure from 54 to 59 psig causes a small reduction in the design margin for the containment response. Based on the analyses performed, the reduction has been

determined to be acceptable since code allowable stresses are not exceeded. The analyses demonstrate that the containment meets all applicable codes and standards at 59 psig. Since the physical containment structure is not changed as a result of this reanalysis, the stresses on the containment structure following a design basis event are increased as a result of this change. Since the margin of safety is the difference between the stresses that would result in containment failure and the stresses at design conditions, this change involves a reduction in the margin of safety. However, the containment failure pressure is much higher than the design basis accident pressure. Also, the DBA [Design Basis Accident] peak pressure is currently very close to the design pressure. With the proposed change, there is margin between the DBA and design pressures. Therefore, this change does not significantly increase the probability of containment failure for design basis events. The ANO–2 [Arkansas Nuclear One, Unit 2] containment building was designed and constructed using significant conservatisms.

The new application of the CSAS signal is proposed to reduce the severity (*i.e.,* reduce the mass and energy addition) of the increased effect of a main steam line break inside containment. Since this aspect of the proposed change improves the response of the plant to this design basis event, it does not involve a significant reduction in margin of safety.

Revising the allowable containment operating conditions provides additional operating margin. The proposed allowable operating conditions are consistent with the accident analyses performed to demonstrate that the peak containment pressure is less than design pressure. The relaxation in containment operating conditions was made possible by the increase in containment design pressure and the addition of the new CSAS actuation to selected components that previously received only an MSIS actuation signal.

Increasing the value of P_a in the containment leakage rate program changes the conditions for performing the tests. [Fifty-nine] psig is well within the design capabilities [of] SSCs that could be affected by the tests. The leakage rate tests will not weaken any of the protective barriers. Past local leak rate tests have been successfully performed at increased pressures (59–60 psig) with no significant difference in leakage results. Therefore, this aspect of the change does not involve a significant reduction in the margin of safety.

As discussed previously, increasing the allowable containment spray pump degradation does not increase the probability or consequences of an accident previously evaluated. Although the allowable pump degradation increased from 6.3% to 10%, analysis has shown that at 10% degraded, the pumps can deliver the required flow to the containment building at the increased containment pressure of 59 psig.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy [Entergy Operations, Inc.] has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 27, 2000.

Description of amendment request: The proposed amendment would delete the current requirements of Technical Specification (TS) 4.7.9.1.2.d, ''Source installed in the Boronometer,'' associated with the installed boronometer sealed source. The source was recently removed and stored, and the requirements of TS 4.7.9.1.2.d are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The modification performed on the boronometer removed its sealed source and placed the source in safe storage. The removal of this source from plant systems removes the possibility of contamination or radiological exposure from this source to personnel working on or near the boronometer. Since the source has been placed in safe storage, no change in the probability or consequences of an accident previously evaluated in evident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The relocation of the boronometer's sealed source to safe storage has not resulted in any new or different kind of accident from any previously evaluated. The proposed deletion of Specification 4.7.9.1.2.d furthermore does not remove all controls from the subject source. While maintained in storage, the requirements of Specification 4.7.9.1.2.b will govern testing of the sealed source should it be placed in service or transferred to another licensee in the future.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The relocation of the boronometer's sealed source to safe storage does not impact the margin to safety. Controls are currently established governing sources that are stored and not in use. Therefore, deleting the current requirements of Specification 4.7.9.1.2.d does not result in a reduction in the margin of safety. Furthermore, deletion of this surveillance requirement will act to reduce radiological exposure to personnel that would normally be assigned to perform this activity.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 27, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.4.9.1.2 and delete TS Table 4.4–5 to remove from the TSs the schedule for the withdrawal of reactor vessel material surveillance specimens, pursuant to the guidance provided in Generic Letter 91–01, ''Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens From Technical Specifications.'' Changes to the related Bases are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification (TS) change. The Reactor Vessel Material Surveillance Program ensures the availability of data to update the in-service operating temperature and pressure limits as well as the Low Temperature Overpressure (LTOP) and Pressurized Thermal Shock (PTS) analyses. The schedule identifying the

withdrawal of the surveillance specimens will be removed from the TSs; however, the proposed TS 4.4.9.1.2 will continue to require that the specimens be removed and examined to determine the changes in their material properties, as required by Appendix H to 10CFR50. The proposed surveillance specimen removal schedule conforms to ASTM [American Society for Testing and Materials] E185–82, ''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels'' as referenced by 10CFR50, Appendix H. No changes to the design of the facility have been made. No new equipment has been added or removed and no operational setpoints have been altered.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not add or modify any equipment nor does the proposed change involve any operational changes to any plant systems or Limiting Conditions for Operation (LCO). As required by Appendix H, the proposed change will continue to require the specimens be removed and examined to determine changes in their material properties. This change does not introduce any new accident or malfunction mechanism nor is any physical plant change required.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

Removal of the schedule from Technical Specifications is an administrative change and will have no impact on the margin of safety. Since changes to the reactor vessel material surveillance specimens withdrawal schedule are controlled by the requirements of Appendix H to 10CFR50, removing the schedule from Technical Specifications will not result in any loss of regulatory control. In addition, to ensure the surveillance specimens are withdrawn at a proper time, surveillance requirement 4.4.9.1.2 will continue to require specimens be removed and examined per the ANO–2 [Arkansas Nuclear One, Unit 2] Safety Analysis Report to determine changes in their material properties, as required by Appendix H.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 12, 2000 (NPF–38–226).

Description of amendment request: The proposed change modifies Technical Specifications (TS) 3.9.4, ''Containment Building Penetrations,'' to allow the containment equipment door, airlocks, and other penetrations to remain open, but capable of being closed, during core alterations or movement of irradiated fuel in containment. Additionally, a note, Bases changes, and Surveillance Requirements changes provide further enhancements to clarify equipment door, airlock, and penetration closure capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change would allow the containment equipment hatch door, personnel air lock (PAL) doors, emergency air lock (EAL) doors and penetrations to remain open during fuel movement and core alterations. These penetrations are normally closed during this time period in order to prevent the escape of radioactive material in the event of a fuel handling accident (FHA) inside the containment. These penetrations are not initiators of any accident. The probability of a FHA is unaffected by the position of these penetrations.

The new FHA analysis with an open containment demonstrates the maximum offsite doses are well within the acceptance limits specified in SRP [Standard Review Plan] 15.7.4. This FHA analysis results in maximum offsite doses of 53.70 rem to the thyroid and 0.176 rem to the whole body. The calculated control room dose is also well within the acceptance criteria specified in GDC [General Design Criteria] 19. The analysis results in thyroid and whole body dose to the control room operator of 0.932 rem and 0.015 rem, respectively.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design, configuration, or method of operation of the plant beyond the standard functional capabilities of the equipment. The proposed change involves a change to the Technical Specifications (TS) that would allow the equipment hatch door, the PAL door, the EAL door and penetrations to be open during core alterations and fuel movement within the containment. Having these doors and penetrations open does not create the possibility of a new accident. Provisions to ensure the capability to close the containment will have been made in the event of a FHA.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response:

This proposed change has the potential for an increased dose at the site boundary due to a FHA; however, the analysis demonstrates that the resultant doses are well within the appropriate acceptance limits. The margin of safety, as defined by SRP 15.7.4, Rev. 1, has not been significantly reduced. The offsite and control room doses due to a FHA with an open containment have been evaluated with conservative assumptions, such as all airborne activity reaching the containment is released instantaneously to the outside atmosphere, will ensure the calculation bounds the expected dose. Closing the equipment hatch door and at least one door in each personnel airlock following an evacuation of the containment reduces the offsite doses in the event of a FHA and provides additional margin to the calculated offsite doses.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: January 25, 2000.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 3/4.4.5, ''Reactor Coolant System—Steam Generators,'' and its

associated Bases. In accordance with Framatome Technologies Incorporated Topical Report BAW–10236P, Revision 0, ''Addendum for Davis-Besse Repair Roll UTS Exclusion Zones,'' the proposed changes would modify the repair roll process to update exclusion zones and allow the use of the double repair roll for the repair of once-through steam generator tubes with defects within the upper tubesheet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, (DBNPS) Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because testing and analysis have shown the proposed repair roll process to be added to Surveillance Requirement (SR) 4.4.5.4.a.7 ensures the new pressure boundary joint created by the repair roll process provides structural and leakage integrity equivalent to the original design and construction for all normal operating and accident conditions. The proposed repair roll process does not alter the design or operating characteristics of the steam generators or systems interfacing with the steam generators. Therefore, the proposed changes to SR 4.4.5.4.a.7 will not increase the probability of a previously evaluated accident.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not involve an increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed repair roll process to be added to Surveillance Requirement (SR) 4.4.5.4.a.7 ensures the new pressure boundary joint created by the repair roll process provides structural and leakage integrity equivalent to the original design and construction for all accident conditions. Should a repaired tube fail, the radiological consequences would be bounded by the existing Steam Generator Tube Rupture analysis.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not involve an increase to the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because there will be no change in the operation of the steam generators or connecting systems as a result of the repair roll process added by the proposed changes to SR 4.4.5.4.a.7. The physical changes in the steam generators associated with the repair roll process have been evaluated and do not create the possibility for a new or different kind of accident from any accident previously evaluated, *i.e.,* the physical change in the steam generators is limited to the location of the primary to secondary boundary within the tubesheet. Furthermore, the repair roll process installs a pressure boundary joint equivalent to that of the original fabrication. Accordingly, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not create the possibility of any new or different kind of accident.

3. Not involve a significant reduction in a margin of safety because all of the protective boundaries of the steam generator are maintained equivalent to the original design and construction with tubes repaired by the repair roll process. Furthermore, tubes with primary system to secondary system boundary joints created by the repair roll have been shown by testing and analysis to satisfy all structural, leakage, and heat transfer requirements. The additional testing of tubes repaired by the repair roll process under existing SR 4.4.5.9 provides continuing inservice monitoring of these tubes such that inservice degradation of tubes repaired by the repair roll process will be detected. Therefore, the changes to SR 4.4.5.4.a.7 to modify the repair process do not reduce the margin of safety.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 30, 1999.

Description of amendment request: The licensee proposed to amend the unit's Technical Specifications (TS), Section 3.4.4, ''Emergency Ventilation System [EVS],'' and Section 3.4.5, ''Control Room Air Treatment System,'' to require testing consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989. The current standard specified by these sections is ANSI N510–1980. The licensee's application for amendment is a response to the NRC's Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change will require testing the EVS and Control Room Air Treatment System charcoal filters in accordance with ASTM D3803–1989 versus ANSI N510–1980. Neither the EVS or Control Room Air Treatment System involve initiators or precursors to an accident previously evaluated as both systems perform mitigative functions in response to an accident. Failure of either system would result in the inability to perform its mitigative function but no failure would increase the probability of an accident. Accordingly, changing the test methodology of the charcoal filters will not affect any accident precursors. Therefore, the probability of an accident previously evaluated is not increased.

The NMP1 [Nine Mile Point Unit 1] EVS is designed to limit the release of radioactive gases to the environment within the guidelines of 1OCFR1OO for analyzed accidents. The Control Room Air Treatment System is designed to limit doses to control room operators to less than the values allowed by GDC 19. Both systems contain charcoal filters which require laboratory carbon sample analysis be performed in accordance [with] ANSI [American National Standards Institute] N510–1980 as required by TS. Charcoal filter samples are tested to determine whether the filter adsorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with ASTM D3803–1989 (versus ANSI N510) will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Therefore, the proposed changes will not involve a significant increase in the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change will require testing the EVS and Control Room Air Treatment System charcoal filters in accordance with ASTM D3803–1989 versus ANSI N510–1980. This change will not involve placing these systems in new configurations or operating the systems in a different manner that could result in a new or different kind of accident. Testing in accordance with the ASTM D3803–1989

standard will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed TS changes will not adversely affect the performance characteristics of the EVS or Control Room Air Treatment System nor will it affect the ability of these systems to perform their intended functions. Charcoal filter samples are tested to determine whether the filter absorber efficiency is greater than that assumed in the design basis accident analysis. The proposed TS changes to test the charcoal material in accordance with ASTM D3803–1989 (versus ANSI N510–1980) will assure the ability of the subject systems to perform their intended function by providing a more realistic prediction of the capability of the charcoal filters. Also, the proposed changes are consistent with the changes recommended in NRC GL 99–02. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Acting Section Chief: Marsha Gamberoni.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment requests: November 10, 1999.

Description of amendment requests: The proposed amendments would modify Technical Specification (TS) 4.12, ''Steam Generator Tube Surveillance,'' to revise the elevated F–Star (EF*) distance from 1.62 inches to 1.67 inches based on Westinghouse Topical Report WCAP–14225, Revision 2, entitled ''F* and Elevated F* Tube Plugging Criteria for Tube with Degradation in the Tubesheet Region of the Prairie Island Units 1 and 2 Steam Generators.'' The change was necessitated by a correction of a minor error in the tubesheet bending calculation associated with the previously approved EF* criterion.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the EF* Distance ensures the roll expansion is sufficient to preclude tube pullout from tube degradation located below the EF* Distance, regardless of the extent of the tube degradation. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. Tube rupture and pullout is not expected for tubes using either the proposed or current EF* Distance because, in practice, the roll expanded region exceeds both distances. Any leakage out of the tube from within the tubesheet at any elevation in the tubesheet is still fully bounded by the existing steam generator tube rupture analysis included in the Prairie Island USAR [Updated Safety Analysis Report].

Leakage testing of roll expanded tubes indicates that for roll lengths approximately equal to the EF* distance, any postulated faulted condition primary to secondary leakage from EF* tubes would be insignificant. Leakage testing was previously reported for 2 inch effective length hard rolls.

Thus, neither the probability nor consequences of previously evaluated accidents are affected by the proposed increase in the EF* Distance.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

Implementation of the proposed EF* Distance does not introduce any significant changes to the plant design basis, nor does it change the way any system, structure, or component is operated. Use of EF* (either using the existing or proposed EF* Distance) does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis.

Thus, no new or different kind of accident is created by the proposed increase in EF* Distance.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The proposed increase in EF* Distance will not decrease the integrity of the reactor coolant system boundary. The use of the EF* criterion has been previously demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg. Guide 1.121 (intended for indications in the free span of tubes) and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation of the EF* criterion is any degradation indication in the tubesheet region, more than the EF* Distance below the bottom of the transition between the roll expansion and the unexpanded tube. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design.

The EF* Distance has been verified by testing to be greater than the length of roll expansion required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. Resistance to tube pullout is based upon the primary to secondary pressure differential as it acts on the surface area of the tube, which includes the tube wall cross-section, in addition to the inner diameter based area of the tube. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the USAR accident analyses.

Revision of the EF* length does not affect the integrity of the existing EF* tubes which are in service due to the conservative length of the additional reroll.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the USAR or the Technical Specification Bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: January 5, 2000.

Description of amendment request: This request proposes to change Technical Specification Section 3/4 6.1.6, including its Bases, and to add Section 6.8.4.h. The proposed changes support the new requirements of 10 CFR 50.55a, which require licensees to update their Containment Vessel Structural Integrity Programs to incorporate the provisions of ASME Section XI, Subsection IWL (1992 Edition with 1992 Addenda) and the five additional provisions found in 10 CFR 50.55a(b)(2)(viii).

Basis for proposed no significant hazards consideration determination: As required by 10 C.F.R. 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the surveillance requirements for containment reinforced concrete and unbonded post-tensioning systems inservice examinations as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(viii). The revised requirements affect the inservice inspection program designed to detect structural degradation of the containment reinforced concrete and unbonded post-tensioning systems and do not affect the function of the containment reinforced concrete and unbonded post-tensioning system components. The reinforced concrete and unbonded post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new of different requirements or introduce a new accident initiator, accident precursor or malfunction mechanism. The proposed changes provide an NRC approved ASME Code inspection/testing methodology to assure age related degradation of the containment structure will not go undetected. The function of the containment reinforced concrete and unbonded post-tensioning system components are not altered by this change. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different type than previously evaluated.

3. This proposed change does not involve a significant reduction in a margin [of] safety.

The Reactor Building internal design pressure is 57 psig and the maximum peak pressure from a postulated steam line break is 53.5 psig. The proposed change does not impact the margin of safety included in the design pressure compared to the peak calculated pressure because the proposed activity does not alter, in any way, the available force provided by the tendons. Additionally, the proposed activity does not affect the initial temperature conditions within the Reactor Building assumed in the accident analysis for a steam line break. Therefore, this proposed change does not involve a significant reduction in a margin [of] safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: January 27, 2000.

Description of amendment request: The Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS), Section 5.6.1, are being revised to replace the maximum reference fuel assembly K infinity (K∞) with a figure of Integral Fuel Burnable Absorbers (IFBA) rods per assembly versus nominal fuel enrichment. This change will assure that the reactivity requirements for spent fuel storage remain satisfied. Additionally, the requirement for new fuel storage is being revised to remove K∞ since IFBAs are not considered or required in the criticality analysis for new fuel storage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise the methodology utilized in determining the IFBA requirement for storage of spent fuel. IFBA credit is not used in the new fuel storage criticality analysis performed by Westinghouse. Removing K infinity (K∞) from these Specifications and replacing the spent fuel requirement with the IFBA-enrichment curve will not result in any increase in the probability or consequences of an accident previously evaluated. The analysis of concern is the criticality analysis for storage of fuel in the spent fuel storage racks. The analysis must conclude that fuel stored in the configurations allowed in the spent fuel storage racks will not result in any unplanned criticality.

The IFBA rods per assembly versus the nominal enrichment of the fuel assembly curve and the K∞ methodology were both developed to ensure that K_{eff} in the spent fuel storage racks remains less than or equal to 0.95 under all postulated conditions. This limit is included in the VCSNS licensing basis. The IFBA versus enrichment curve results in determining more accurate IFBA requirements than the K∞ methodology, and continues to maintain the licensing basis limit.

This change will not revise the geometry of the spent fuel storage racks, the poisons present to prevent criticality, or coolant capabilities. The licensing basis limit for reactivity control of the spent fuel storage racks remains satisfied.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not result in any change to the design or operation of the spent fuel pool or any support systems associated with the spent fuel pool. The IFBA requirements developed from using the IFBA versus enrichment curve are potentially more conservative than developed using the K∞ methodology. There are no scenarios that are postulated to occur that would create the possibility of a new or different kind of accident from any previously evaluated in the FSAR (see original) or FPER (see original).

3. Does this change involve a significant reduction in margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. IFBA is not assumed in any criticality analysis performed for new fuel storage. This change incorporates a more accurate method for determining IFBA requirements for fuel storage in the spent fuel storage racks. Both the current methodology and the proposed methodology have been reviewed and approved by the NRC in WCAP–14416–NP–A as acceptable methods for assuring that the licensing basis for the spent fuel pool reactivity limit remain satisfied. Therefore, the margin of safety with respect to unplanned criticality, for the storage of fuel in the spent fuel storage racks is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 17, 1999 (TS 99–25).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by modifying License Provision Statement 2.B.(5), in conjunction with an exemption to 10 CFR 50.54(ee), to allow temporary storage of low-level radioactive waste generated at the Watts Bar Nuclear Plant (WBN) at the SQN plant site.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences for an accident or malfunction is not increased. Design basis accidents were previously analyzed by TVA and reviewed by NRC as part of the materials license process for the on-site storage facility (OSF). The intended future usage of the OSF is bounded by those analyses, with the exception of transport from WBN to SQN. Transport from WBN to SQN involves a distance of only 35 miles, which is very likely a small increment of the distance to any final off-site repository. For example, the 35-mile transit from WBN to SQN is much less than the 370-mile distance from WBN to Barnwell, South Carolina. The shipment of LLRW from WBN was reviewed as part of the WBN Unit 1 operating license request (WBN Final Safety Analysis Report [FSAR] Section 11.5.6). As with any shipment of low-level radioactive waste (LLRW), all Department of Transportation (DOT) requirements will be met.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in SQN's FSAR is not created by the proposed change; nor is the possibility for an accident or malfunction of a different type. Potential accidents were previously analyzed by TVA and reviewed by NRC as part of the materials license process for the OSF. The intended future usage of the OSF is bounded by those analyses, with the exception of transport from WBN to SQN. Radwaste shipments from WBN to SQN will be no different than any other radwaste shipment except that the distance is only 35 miles. This transportation route does not present any significant potential negative impacts on the public health and safety. As with any shipment of LLRW, all DOT requirements will be met.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in the margin of safety. The margin of safety was previously analyzed by TVA and reviewed by NRC as part of the materials license process for the OSF. The intended future usage of the OSF is bounded by those analyses, with the exception of transport from WBN to SQN. The transport route from WBN to SQN, which involves a distance of only 35 miles, does not present any significant potential negative impacts on the public health and safety [and] is very likely a small increment of the distance to any final off-site repository. For example, this is much less than the distance to Barnwell. The shipment of LLRW from WBN was reviewed as part of the WBN Unit 1 operating license request (WBN FSAR Section 11.5.6). As with any shipment of LLRW, all DOT requirements will be met.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: January 13, 2000 (Reference Number TXX–00011).

Brief description of amendments: The proposed amendments would change the Comanche Peak Steam Electric Station (CPSES) Technical Specification (TS) as follows: (1) Revise TS 3.8.3 (Condition B and Surveillance Requirement (SR) 3.8.3.2) to conservatively increase the required emergency diesel generator (DG) lube oil inventory values, (2) revise TS SR 3.8.3.2 to add a note stating that the surveillance is not required to be performed until the diesel has been in shutdown greater than 10 hours, and (3) delete the footnote associated with SR 3.8.4.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

(a) The proposed changes establish more conservative DG lube oil inventory levels to support required DG operations. Conservatively revising the required lube oil levels does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) The proposed change to add a surveillance note cannot affect the probability or consequences of any accident. When surveillances are done, it cannot initiate an accident or affect the course of mitigation. Lube oil levels are checked after each run. If the lube oil level was at the minimum required ''1.75 inches below the low static level'' at the start of a normal 24 hour surveillance run, 5 days of lube oil inventory is provided above the Condition B level of ''5.5 inches below the low static level.'' Allowing 10 hours after the surveillance run to check the static level is not significant because relative lube oil level is maintained during engine run through the use of an indicator on the panel ensuring adequate oil level during and just after the run. The Condition B lube oil inventory ensures a minimum of [2] days of operation before any addition of lube oil would be needed. In the event of an accident which requires extended run of the emergency diesel generators, lube oil can be added with the engines running.

(c) Deletion of the footnote associated with SR 3.8.4.7, which provided a one time exception for the battery surveillance, is an administrative change and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

(a) Plant procedures are only altered to the extent that the revised specification will enhance the monitoring of the DG lube oil inventory level to support required DG operation at full load conditions. These changes ensure continued support of the safety related DG, do not involve any physical alteration to the plant, and do not affect their failure or failure modes.

(b) The proposed change to add a surveillance note [does] not involve any physical alteration to the plant and [does] not affect their failure or failure modes.

(c) Deletion of the footnote associated with SR 3.8.4.7, which provided a one time exception for the battery surveillance, is an administrative change and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

(a) The proposed changes will not alter any accident analysis assumptions, initial conditions, or results. Conservatively revising the required DG lube oil levels will ensure proper DG operations as assumed in the safety analyses.

(b) The proposed change to add a note will not alter any accident analysis assumptions,

initial conditions, or results. Conservatively revising the required conditions for DG lube oil level surveillance will ensure proper DG operations as assumed in the safety analyses.

(c) Deletion of the footnote associated with SR 3.8.4.7, which provided a one time exception for the battery surveillance, is an administrative change and does not involve a significant reduction in a margin of safety.

Therefore, these changes [do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: January 13, 2000 (Reference Number TXX–00010).

Brief description of amendments: The proposed amendments would change Comanche Peak Steam Electric Station (CPSES) Technical Specification Surveillance Requirement (SR) 3.3.1.10 to add Note 3 which would allow entry into Modes 2 or 1 without the performance of N–16 detector plateau verification until 72 hours after achieving equilibrium conditions at greater than or equal to 90% of rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is considered to be a correction of an editorial error. The proposed revision to SR 3.3.1.10 is consistent with the current CPSES licensing basis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed change is considered to be an editorial correction and does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

The proposed change is considered to be an editorial correction and does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: January 14, 2000 (ULNRC–04172).

Description of amendment request: The proposed amendment would revise several sections of the improved Technical Specification (ITSs) to correct eight editorial errors made in either (1) The application dated May 15, 1997, (and supplementary letters) for the ITSs or (2) the certified copy of the ITSs that was submitted in the licensee's letters of May 27 and 28, 1999. The ITSs were issued as Amendment No. 133 by the staff in its letter of May 28, 1999, and will be implemented by the licensee to replace the current TSs by April 30, 2000. There are no changes in any requirements in the ITSs. The proposed changes to the ITSs are:

(1) The correct abbreviation in the table of contents, ITS page 2, Section 3.3.7, is ''CREVS'' instead of ''CREFS''.

(2) The Condition D for limiting condition for operation (LCO) 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' has a reference to itself (Condition D) that should be deleted on ITS page 3.7–5.

(3) The spelling of ''required'' will be corrected in the definition of the Term Actions on ITS page 1.1–1.

(4) The completion time of 8 hours for Required Action A.2 of Example 1.3–6 on ITS page 1.3–10 will be properly relocated to be on the same line as A.2.

(5) The note for Condition D of LCO 3.7.4, ''Atmospheric Steam Dump Valves (ASDs),'' on ITS page 3.7–10 will be made the full column width of the required action column.

(6) The word boundary in the note for LCO 3.7.13, ''Emergency Exhaust System (EES),'' on ITS page 3.7–31, will not be capitalized.

(7) The note for Condition A of LCO 3.7.16, ''Fuel Storage Pool Boron Concentration,'' on ITS page 3.7–36 will be made the full column width of the required action column.

(8) The colon in 3.1:5 will be replaced by a period to have 3.1.5 in the list of specifications given in item a.7 of Section 5.6.5, ''Core Operating Limits Report (COLR),'' on ITS page 5.0–29.

Basis for proposed no significant consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve corrections to the ITS that are associated with the original conversion application and supplements or the certified copy of [the] ITS. The changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications. As such, the administrative changes do not effect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose any new or eliminate any old requirements.

Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not reduce a margin of safety because they have no effect on any safety analyses assumptions. The changes are administrative in nature.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: December 21, 1999.

Description of amendment request: The proposed amendment would change Section 15.3 of the Technical Specifications in order to more clearly define the requirements for the service water (SW) system operability. The December 21, 1999, application supercedes the July 30, 1998, application that was previously noticed in the **Federal Register** (63 FR 71976) on December 30, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The Service Water System is primarily a support systems required to be operable for accident mitigation. Portions of the SW system supplying the containment fan coolers also function as part of the containment pressure boundary under post accident conditions. Failures within the SW system are not an initiating condition for any analyzed accident.

Analyses performed demonstrate that under the Technical Specifications allowable configurations, the SW system will continue to perform all required functions. The SW system is capable of supplying the required cooling water flow to systems required for accident mitigation. That is, the SW system removes the required heat from the containment fan coolers and residual heat removal heat exchangers ensuring containment pressure and temperature profiles following an accident are as evaluated in the FSAR [Final Safety Analysis Report]. This in turn ensures that environmental qualification of equipment inside containment is maintained and thus functions as required post-accident.

SW system response post accident is within all design limits for the system. Transient and steady state forces within the system remain within all design and operability limits, thereby maintaining the integrity of the system inside containment and the integrity of the containment pressure boundary. Assumptions dependent on the containment pressure profile for containment leakage assumed in the radiological consequences analyses remain valid.

In addition, removing required heat from containment ensures that cooling of the reactor core is accomplished for long-term accident mitigation.

Therefore, operation of the SW system as proposed will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the way in which the SW system performs its design functions nor the design criteria of the system. The proposed changes do not introduce any new or different normal operation or accident mitigation functions for the system. Therefore, no new accident initiators are introduced by the proposed changes. Operation of [the] SW system as proposed cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Analyses performed in support of the proposed amendments demonstrate that the SW system continues to perform its function as assumed and credited in the accident analyses and radiological consequence analyses performed for the Point Beach Nuclear Plant. The SW flow analyses conservatively assume limiting calculational parameters such as minimum allowed IST [inservice testing] pump performance curves, minimum credible pump bay level, maximum postulated lake temperature, inclusion of system water leakage, maximum flow through system temperature control valves, bounding values for system throttle valve settings and impacts of instrument inaccuracy. Therefore, the analyses and results are not changed. All analysis limits for the system remain met. The SW system continues to be operated and responds within all design limits for the system. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments cannot result in a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: December 28, 1999.

Brief description of amendment: The amendment would revise the reactor vessel material coupon withdrawal schedule specified in Technical Specifications Table 4.4.6.1.3–1, entitled ''Reactor Vessel Material Surveillance Program-Withdrawal Schedule.''

Date of publication of individual notice in **Federal Register:** January 14, 2000 (65 FR 2443).

Expiration date of individual notice: February 14, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances

provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 26, 1999, as supplemented May 21, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to extend the completion time for one inoperable low pressure safety injection subsystem from 72 hours to 7 days. These amendments provide partial response to the licensee's application for amendments. The remaining request will be addressed under separate correspondence.

Date of issuance: February 1, 2000.

Effective date: February 1, 2000, to be implemented within 45 days.

Amendment Nos.: Unit 1—124, Unit 2—124, Unit 3—124.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 1999 (64 FR 17023).

The May 21, 1999, supplement provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 27, 1999, as supplemented September 20, 1999.

Brief description of amendments: The amendments would modify the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 Technical Specifications to allow placement of one or more assemblies on spent fuel rack spacers to support fuel reconstitution activities in the spent fuel pool.

Date of issuance: February 3, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 233 and 209.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51345).

The September 20, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 3, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 4, 1999, as supplemented December 3, 1999, and January 11, 2000.

Brief description of amendment: This amendment revises Technical Specification 6.9.1.6.2 to incorporate analytical methodology references which are used to determine core operating limits. The analytical methodologies referenced are documented in topical reports which have been accepted by the Nuclear Regulatory Commission for referencing in licensing applications.

Date of issuance: February 10, 2000.

Effective date: February 10, 2000.

Amendment No.: 94.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46426).

The December 3, 1999, and January 11, 2000, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 12, 1999, as supplemented by letter dated January 10, 2000.

Brief description of amendments: The amendments changed Technical Specification (TS) 3/4.6.K to revise the reactor pressure boundary pressure-temperature limits, changed TS 3/4.12.C to delete a special test exception which allows performance of the hydrostatic test above 212 degrees Fahrenheit while in Mode 4, and changed TS 3/4.6.P to clarify the operability requirements for the residual heat removal system during the hydrostatic test.

Date of issuance: February 4, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 195 & 191.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70081).

The January 10, 2000, letter did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2000.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of application for amendment: July 29, 1999 as supplemented by letter dated October 20, 1999.

Brief description of amendment: The amendment consists of changes to Surveillance Requirements (SR) 3.8.4.6 of Technical Specifications (TS) 3.8.4, ''DC Sources—Operating'' and SR 3.8.5.1 of TS 3.85, ''DC Sources—Shutdown.''

Date of issuance: January 28, 2000.

Effective date: January 28, 2000, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 160.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46432).

The October 20, 1999, supplemental letter corrected the page numbering of the technical specifications and did not expand the scope of the application as originally noticed and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 25, 1999, as supplemented by letter dated December 9, 1999.

Brief description of amendment: The amendment consists of a modification to TS 3/4.5.1 to allow up to 72 hours to restore safety injection tank (SIT) operability if one SIT is inoperable due to boron concentration not within the limits or the inability to verify level or pressure. The proposed change also allows up to 24 hours to restore SIT operability if one SIT is inoperable due to other reasons when reactor coolant system pressure is greater than or equal to 1750 pounds per square inch, absolute.

Date of issuance: February 7, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 155.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 24, 1999 (64 FR 9191).

The December 9, 1999, letter provided additional information that did not change the scope of the application as initially noticed or change proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 16, 1998, as supplemented by letter dated May 10, 1999, and December 8, 1999.

Brief description of amendment: This amendment changes portions of the Technical Specifications regarding the Service Water System.

Date of issuance: February 3, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 89.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 2, 1998 (63 FR 66596).

The May 10 and December 8, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 16, 1999.

Brief description of amendment: The amendment relocates Technical Specification (TSs) 3/4.9.3.2, ''Refueling Operations, Spent Fuel Temperature,'' 3/4.9.3.3, ''Refueling Operations, Decay Time,'' 3/4.9.5, ''Refueling Operations, Communications,'' 3/4.9.6, ''Refueling Operations, Crane Operability—Containment Building,'' and 3/4.9.7, ''Refueling Operations, Crane Travel—Spent Fuel Storage Building,'' to the Millstone, Unit No. 2 Technical Requirements Manual. The associated Bases pages and index pages are also modified to address the proposed change.

Date of issuance: February 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 240.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 6, 1999 (64 FR 54378).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 2000.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: February 19, 1998, as supplemented July 28, 1999.

Brief description of amendment: The amendment implements the Radioactive Effluent Technical Specifications and makes changes necessary to implement the revised 10 CFR Part 20.

Date of issuance: February 7, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 199.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46442).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 2000.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 16, 1998, as supplemented January 28, 1999.

Brief description of amendment: The amendment relocates the Chemical and Volume Control System Technical Specifications.

Date of issuance: February 7, 2000.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 200.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 24, 1999 (64 FR 9200).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 2000.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 6, 1999.

Brief description of amendments: The amendments revised Technical Specification Definition 1.9, ''Core Alterations,'' to explicitly define core alterations as the movement of any fuel, sources, or reactivity control components within the reactor vessel with the vessel head removed and fuel in the vessel.

Date of issuance: February 1, 2000.

Effective date: February 1, 2000, to be implemented within 30 days.

Amendment Nos.: Unit 1–123; Unit 2–111.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73099).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 1, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 12, 1999.

Brief description of amendments: These amendments revise Technical Specification Section 3.9.4.c, ''Containment Building Penetrations,'' and the associated bases to allow use of administrative controls to unisolate certain containment penetrations during refueling operations.

Date of issuance: February 11, 2000.

Effective date: As of date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 249 and 240.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1928).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 22, 1999, as supplemented December 17, 1999.

Brief description of amendments: The amendments reflect changes to the Technical Specifications in order to incorporate the Westinghouse 422V+ fuel assemblies into the reactor cores.

Date of issuance: February 8, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 193 and 198.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 28, 1999 (64 FR 40910).

The December 17, 1999, letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not affect the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 16th day of February, 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4236 Filed 2–22–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three rescissions of budget authority, totaling $128 million, and two deferrals of budget authority, totaling $1.6 million.

The proposed rescissions affect the programs of the Department of Energy and the Department of Housing and Urban Development. The proposed deferrals affect programs of the Department of State and International Assistance Programs.

William J. Clinton

THE WHITE HOUSE,

February 9, 2000.

BILLING CODE 3110–01–P

Rescission Proposal Number R00-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: DEPARTMENT OF ENERGY
Bureau: Atomic Energy Defense Activities
Account: Defense Environmental Restoration and Waste Management (89X0242)

New budget authority:	$4,467,308,000
Other budgetary resources:	33,105,172
Total budgetary resources:	4,500,413,172

Amount proposed for rescission: 13,000,000

Proposed appropriations language:

Of the funds made available under this heading in the Energy and Water Development Appropriations Act, 2000 (P.L. 106-60), $13,000,000 are rescinded.

Justification: Section 308 of the Energy and Water Development Appropriations Act, 2000, prohibited the use of Defense Environmental Restoration and Waste Management funds for laboratory-directed research and development. The proposal would rescind $13 million of funds appropriated in 2000 for overhead activities supporting research and development at Environmental Management laboratories that exceed current requirements.

Estimated programmatic effect: As a result of the proposed rescission, net Federal outlays will decrease, as specified below.

Effect on Outlays (in thousands of dollars)					
FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Total
-9,000	-3,000	-1,000	-----	-----	-13,000

Rescission Proposal Number R00-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: SPR Petroleum Account (89X0233)

New budget authority:	---
Other budgetary resources:	$32,678,652
Total budgetary resources:	32,678,652
Amount proposed for rescission:	12,000,000

Proposed appropriations language:

Of the funds made available under this heading, $12,000,000 are rescinded.

Justification: These funds were originally appropriated to fund acquisition, transportation, and injection of petroleum into the Strategic Petroleum Reserve and for draw-down and distribution of the Reserve. These balances are no longer needed because only *de minimus* oil acquisition, transportation, and injection is occurring. In the event that draw-down and distribution of the Reserve is necessary, authority has been provided to the Department of Energy to transfer balances from other departmental accounts.

Estimated programmatic effect: None.

Rescission Proposal Number R00-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Bureau: Public and Indian Housing
Account: Housing Certificate Fund (86X0319)

New budget authority:	$7,176,695,000
Other budgetary resources:	2,695,437,000
Total budgetary resources:	9,872,132,000
Amount proposed for rescission:	103,000,000

Proposed appropriations language:

Of the amounts recaptured under this heading from funds appropriated during fiscal year 1999 and prior years, $103,000,000 are rescinded.

Justification: This proposal would rescind $103 million of obligated balances estimated to be recaptured during 2000. These recaptures will result from the elimination of excess funds available on some long-term section 8 contracts.

Estimated programmatic effect: None.

Deferral Number D00-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: United States emergency refugee and migration assistance fund [1] [2] (11X0400)

New budget authority:	$12,452,000
Other budgetary resources:	181,737,266
Total budgetary resources:	194,189,266
Amount deferred for entire year:	172,857,659

Justification: This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

Estimated programmatic effect: None.

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[1] This account was the subject of a similar deferral in FY 1999 (D99-1).

[2] Subsequent releases have reduced the amount deferred to $145,309,659.

Deferral No. D00-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: International Security Assistance
Account: Economic support fund [1] (72X1037, 729/01037, 720/11037) [2]

New budget authority:	$2,354,156,000
Other budgetary resources:	180,397,234
Total budgetary resources:	2,534,553,234
Amount deferred for entire year:	1,449,159,155 [2]

Justification: This deferral withholds funds available for international assistance pending the development of country-specific plans that assure that aid is provided in an efficient manner. Funds also are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund includes funds for the International Fund for Ireland.

Estimated programmatic effect: None.

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[1] This account was the subject of a similar deferral in FY 1999 (D99-2).

[2] The amounts deferred by account are:

72X1037	$8,132,186
729/01037	35,926,969
720/11037	1,405,100,000
Total	1,449,159,155

Subsequent releases have reduced the amount deferred to $1,440,835,514.

[FR Doc. 00–4194 Filed 2–22–00; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27138]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 16, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 10, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 10, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70–9529)

Jersey Central Power & Light Company (''JCP&L''), 2800 Pottsville Pike, Reading, Pennsylvania, a wholly owned public utility subsidiary of GPU, Inc., a registered holding company, has filed an application-declaration with this Commission under sections 6(a), 7, 9, 10, 12(b), 12(f), and 13(b) of the Act and rules 54, 90, and 91 under Act.

The New Jersey Electric Discount and Energy Competition Act (''Competition Act'') provides for the restructuring of the New Jersey electric utility and natural gas industries. The Competition Act requires New Jersey electric utilities, including JCP&L, to unbundle electric services into separate charges for, among other things, customer account services (metering and billing), distribution, transmission, and generation. The Competition Act also requires utilities to submit restructuring plans to the New Jersey Board of Public Utilities (''BPU''). These plans include claims for ''stranded costs,'' *i.e.*, costs related to investments and power purchase commitments that a utility would have recovered in a regulated environment but that are not expected to be recovered in a competitive market. Utilities may, subject to BPU approval, recover these costs from their distribution customers through a non-bypassable market transition charge (''MTC'').

To facilitate utility restructurings, the Competition Act empowers the BPU to authorize a utility to issue, directly or indirectly, transition bonds that it may use to recover and/or finance a portion of its stranded costs and to achieve compliance with the statute's rate reduction requirements. In order to issue the bonds, a utility must first apply to the BPU for a bondable stranded costs rate order authorizing their issuance and approving the amount of the MTC that would be used to recover the principal of and interest on the transition bonds and all other costs associated with their issuance.

JCP&L has petitioned the BPU for a bondable stranded costs rate order to authorize securitization of, among other things, the stranded costs attributable to JCP&L investment in its Oyster Creek nuclear generation plant expected as of September 1, 2000, net of deferred income taxes and investment tax credits attributable to the plant. In this petition, JCP&L has requested the BPU for authority to issue up to $587 million (''Bond Amount'') in securitized bonds (''Transition Bonds''). This amount is made up of $400 million representing the expected net investment in Oyster Creek, $20 million for expected transaction costs, $78 million for a deposit made in this amount by JCP&L into the Oyster Creek decommissioning trust, and up to $89 million associated with the costs of a refueling outage for Oyster Creek scheduled for the fall of 2000 that will be funded by JCP&L.

In connection with the petition, JCP&L requests Commission authority through December 31, 2001 for several related transactions. JCP&L seeks to form and acquire all of the common equity interests in a new wholly owned subsidiary (''Special Purpose Issuer''), and to form one or more wholly owned subsidiaries that would own the Special Purpose Issuer. JCP&L also requests authority for the Special Purpose Issuer to issue and sell Transition Bonds from time to time through December 31, 2001 in one or more series aggregating up to the Bond Amount.

JCP&L will transfer to the Special Purpose Issuer the right it receives from the BPU to charge, collect, and receive the MTC in exchange for the net proceeds from the sale of the Transition Bonds. JCP&L states that use of the Special Purpose Issuer to issue the Transition Bonds will enhance the creditworthiness of those bonds by isolating the right to the MTC from any credit risks associated with other JCP&L assets.

JCP&L will service the revenue stream generated by the MTC under a servicing agreement between it and the Special Purpose Issuer. In this capacity, JCP&L will, among other things, bill customers, make collections on behalf of the Special Purpose Issuer, and file with the BPU for periodic adjustments to the MTC to achieve a level that allows for payment of all debt service and full recovery of the amounts the BPU authorizes JCP&L to collect through the MTC. JCP&L may subcontract with other companies to carry out some of its servicing responsibilities.

The servicing agreement entitles JCP&L to receive a servicing fee and reimbursement for certain expenses. Financial rating agency standards require that JCP&L's servicing fee be comparable to a reasonable and sufficient fee negotiated at arms-length by a similar, unaffiliated entity performing similar services. This requirement is meant to assure that the Special Purpose Issuer would be able to operate independently and, accordingly, the fee must be increased to retain a third party servicer if for any reason JCP&L could not continue to perform the services. JCP&L anticipates that the servicing fee will be set at approximately $400,000 annually. This fee may not reflect JCP&L's actual costs of providing the related services and therefore may not meet the cost standards of section 13(b) of the Act and rules 90 and 91 under the Act. Accordingly, JCP&L requests authority to enter into a servicing agreement with the Special Purpose Issuer under an exemption from the cost standards of section 13(b) of the Act and rules 90 and 91 under the Act.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4218 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42427; File No. SR–Amex–99–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Thereto by the American Stock Exchange LLC Amending Exchange Rule 18, Withdrawal From Listing

February 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 1, 1999, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On February 3, 2000, the Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 18, Withdrawal from Listings. The Exchange believes that Exchange Rule 18 is inconsistent with the Commission's increasing emphasis on enhancing competition and merely represents a needless restriction imposing burdensome delays on an issuer's decision to delist. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Michael J. Ryan, Chief of Staff, Amex, dated September 24, 1999 (''Amendment No. 1''). In Amendment No. 1, Amex proposes to amend Exchange Rule 18 instead of rescinding the rule in its entirety, as proposed in its initial filing, to provide that an issuer may voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange.

[4] *See* Letter to Marla Chidsey, Attorney, Division of Market Regulation, Commission, from Ivonne Lugo, Assistant General Counsel, Amex, dated February 2, 2000 (''Amendment No. 2''). In Amendment No. 2, Amex proposes to require the issuer to comply with all applicable state laws in effect in the state in which it is incorporated prior to filing to delist from the Amex. Amendment No. 2 also proposes to make conforming amendments to the Amex *Company Guide* Section 1010 and 1011, conveying the requirements of the amended Exchange Rule 18.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 18 currently requires an issuer, prior to withdrawing a security from listing, to file with the Exchange a certified copy of a resolution adopted by the board of directors authorizing withdrawal from listing and registration and explaining the reasons for such withdrawal. The rule also provides that the exchange may, if it disagrees with the stated reasons for such withdrawal, require the issuer to send to all registered holders of such security a statement of the reasons for such application, together with facts in support thereof within at least fifteen (15) days prior to the filing of a delisting application with the Commission. These Exchange Rule 18 requirements must be met before an application for delisting can be filed with the Commission.

According to the Amex, Exchange Rule 18 has not been applied in many years with respect to issuers seeking to voluntarily withdraw their common stocks from listing on the Exchange. The Exchange believes Rule 18 is inconsistent with the Commission's increasing emphasis on enhancing competition and merely represents a needless restriction imposing burdensome delays on an issuer's decision to delist.

In its Market 2000 Report,[5] the Commission criticized the anticompetitive nature of New York Stock Exchange (''NYSE'') Rule 500 and Exchange Rule 18 when it contrasted these Rules to the NASD's rules for Nasdaq/NMS issuers which allow an issuer to terminate its Nasdaq/NMS designation voluntarily, upon written notice to the NASD. The Commission stated, ''(t)he stands embodied in Rule 500 * * * represents a barrier to delisting that is too onerous, and the standards embodied in Amex Exchange Rule 18 are too vague.'' The Commission found no justification for the stringent approval requirements built into NYSE Rule 500 and Exchange Rule 18, given the current similarities in standards between the NYSE and Nasdaq/NMS markets.

[5] Division of Market Regulation, United States Securities and Exchange Commission, Market 2000—An Examination of Current Equity Market Developments 30–31 (January 1994).

In its comment letters to the Commission (January 6, 1999 and July 7, 1999), on the NYSE's proposal to modify Rule 500, and the latest Commission approved modifications to NYSE Rule 500, the NASD expressed its commitment to eliminating barriers to competition that no longer benefit investors, issuers and other market participants. U.S. markets should compete for listings solely on their market quality and enhanced value-added services to shareholders and issuers. In keeping with the NASD's commitment, and the Commission's increasing emphasis on enhancing competition in the securities industry, the Exchange proposes amending Exchange Rule 18 and the references to the Rule in its Company Guide.

The proposed amendment to Exchange Rule 18 will implement the Exchange's decision to eliminate obstacles and delays for issuers seeking to voluntarily withdraw their common stock from listing on the Exchange. Under new proposed Rule 18, issuers will be able to voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange, provided the issuer complies with all applicable state laws in effect in the state in which it is incorporated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-99–30 and should be submitted by March 15, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4220 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42425; File No. SR–NYSE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Interpretation of Exchange Rules 15 and 390

February 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] Pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, the Exchange has designated this proposal as one that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. Thus, the proposal is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an interpretation of Exchange Rules 15 and 390 to permit members, member organizations, and affiliated persons (as defined in Rule 390) to effect transactions in NYSE-listed stocks in the over-the-counter market by means of the Intermarket Trading System (''ITS'').[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 14, 2000, the day of filing, the Exchange also submitted an amendment to the proposed rule change. *See* Letter from Daniel Odell, Assistant Secretary, Exchange, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated February 14, 2000 (''Amendment No. 1''). Amendment No. 1 stated that the Exchange characterized the rule filing as non-controversial, and requested that it become effective pursuant to Section19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), and Rule 19b–4(f)(6) thereunder, 17 CFR 240.19b–4(f)(6). Amendment No. 1 also requested that the Commission waive the five day pre-filing requirement and the 30 day implementation delay for non-controversial filings.

[4] NYSE Rule 390 limits the ability of members of the Exchange to effect transactions in NYSE-listed stocks in the over-the-counter market. NYSE Rule 15 governs the use of the ITS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to interpret Rules 15 and 390 to apply those rules in a manner that is consistent with the objectives of the Commission in expanding the ITS/CAES linkage,[5] and that is consistent with the Exchange's filing to rescind Rule 390 and thereby eliminate restrictions on trading NYSE-listed stocks in the over-the-counter market.[6] The interpretation provides that members, member organizations, and affiliated persons (as defined in Rule 390) may effect, either as principal or agent, transactions in any ITS-eligible security listed on the Exchange in the over-the-counter market by means of ITS.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[5] On December 13, 1999, the Commission adopted amendments to the ITS plan to expand the ITS/Computer Assisted Execution System (''CAES'') linkage to all listed securities. This amendment is effective February 14, 2000. Prior to the amendment, the ITS/CAES linkage applied only to ''Rule 19c–3'' securities *i.e.,* securities listed after April 26, 1979. *See* Securities Exchange Act Release No. 42212 (December 13, 1999), 64 FR 70297 (December 16, 1999).

[6] On December 10, 1999, the Exchange filed a proposed rule change to rescind Rule 390. *See* File No. SR–NYSE–99–48.

[7] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder because the proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange, however, is required to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission accelerate the operative date of the proposed rule change and waive the five-day pre-filing notice requirement contained in rule 19b–4(f)(6)(iii), so that trading in Exchange-listed securities may proceed in a manner consistent with the Commission's recent amendment to the ITS Plan to expand the ITS/CAES linkage.

The Commission finds that it is appropriate to waive the five-day pre-filing notice requirement, and to designate the proposal to become operative upon filing, because the immediate implementation of the proposed rule change is consistent with the dictates of Section 6(b)(5) of the Act, in that the immediate implementation of the proposal would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Commission recently amended the ITS plan to expand the ITS/CAES linkage to encompass all listed securities because the Commission believed that step was necessary to fully implement the 1975 congressional mandate to create a national market system linking the exchanges and the over-the-counter market. The Commission determined that this expansion would increase broker-dealers' ability to obtain the best price available for their customers, promote competition in listed securities, help ensure equivalent access to the markets, and provide for additional liquidity and more efficient executions. The expanded ITS/CAES linkage became effective on February 14, 2000. The NYSE's proposed interpretation of Rules 15 and 390—to permit members to use ITS to effect transactions in any ITS-eligible securities listed on the NYSE—is consistent with the Commission's action and will help NYSE members benefit from the widened ITS/CAES linkage.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–07 and should be submitted by March 15, 2000.

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4191 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42431; File No. SR–PCX–99–49)

Self-Regulatory Organizations; Order Granting Approval of Proposed rule Change by the Pacific Exchange, Inc. Relating to Financial Reports and Related Notices (EDGAR Rule Filing)

February 16, 2000.

I. Introduction

On November 9, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') Submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to financial reports and related notices. The proposed rule change was published for comment in the **Federal Register** on December 8, 1999. [3]No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

PCX Rule 3.3(t)(1) requires that companies applying for listing on the PCX enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Exchange and Commission rules under the Act, each listed company is required to submit materials to be filed pursuant to the Act. [4]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42193 (Dec. 1, 1999), 64 Fr 68713.

[4] Materials to be filed pursuant to the Act include Forms 8–K Current Report, 10–Q Quarterly Report, 10–K Annual Report, or other annual report forms for issuers using other than Form 10–K; any proxy soliciting material; Forms 3 and 4, reports of the Company's officers, directors, and holders of more than 10% of the registered equity security (one signed copy, except when a company having securities listed on another national securities exchange has taken advantage of SEC Regulation 240.16a–1(c) and has designated another exchange as the only exchange with which such reports are to be filed. Designating an exchange may be accomplished by filing a letter with the Securities and Exchange Commission with a copy to each exchange on which the stock is listed).

The Exchange proposed to amend its filing requirements so that a company that electronically files documents with the Commission will be deemed to have satisfied its comparable filing requirements with the PCX. Specifically, the Exchange proposed that materials required to be filed pursuant to the Act, pursuant to PCX Rule 3.3(t)(1)(ii), except for Form 8–Ks and Preliminary Final Proxy Materials, be considered effectively filed with the Exchange upon filing such documents through the SEC's EDGAR system. The Exchange proposed to continue to require that listed issuers manually file one copy of all Form 8–Ks and Preliminary Final Proxy Materials with the PCX in order to be able to appropriately monitor significant corporate events.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. [5] In particular, the Commission finds that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) [6] of the Act. Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Specifically, the Commission believes that the propsoed rule change will aid companies listing on the PCX be streamlining the requirements assocaited with making routine financial reports available. By permitting these companies to satisfy their obligation to provide financial reports through the EDGAR system, PCX listed companies are relieved of the burden and costs of providing separate paper copies of their SEC filings to the Exchange. Because filings made through EDGAR are available to the public, there is no need to provide additional copies to the Exchange. The proposed rule change is especially appropriate because it reduces the reliance on paper submissions and promotes the use of technology in a regulatory framework. The Commission also believes that requiring companies to provide paper copies of certain filings is appropriate because the Exchange should receive affirmative notification in these cases. The Commission believes that the proposed rule change balances the goal of efficiency with the Exchange's interest in obtaining certain information regarding the activities of listed companies.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) [7] of the Act, that the proposed rule change (SR–PCX–99–49) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4219 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–M

[5] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency and competition because it reduces duplicative filing burdens and reduces costs for listing companies. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–4(b)(2)(C)

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42419; File No. SR–PCX–99–39, Amendment Nos. 1 and 2)

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to the Proposed Rule Change by the Pacific Exchange, Inc. Creating PCX Equities, Inc.

February 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on November 24, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 1 to the proposed rule change, File No. SR–PCX–99–39 as described in Items I, II and III below, which Items have been prepared by the Exchange. [3] The Exchange submitted the proposed rule change to the Commission on October 7, 1999, which was published in the **Federal Register** on December 6, 1999 (''Original Notice'') [4] On January 10, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change. [5] The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the Original Notice, the PCX proposes to create a Delaware Stock corporation to be called PCX Equities, Inc. (''PCX Equities''), which will be a wholly-owned subsidiary of the PCX, and to transfer to PCX Equities all of the assets and liabilities that solely support the equities trading business and/or equities clearing business of the PCX. The PCX also proposes to authorize PCX Equities to issue Equity Trading Permits (''ETPs'') and Equity Automated Systems Access Permits (''Equity ASAPs'') that will entitle holders of the permits to trade equity securities at the new PCX Equities. PCX proposes to amend the Original Notice. The amended proposed rules for implementing the restructuring, including (1) the amended rules for PCX Equities, Inc.; (2) the amended rules for the PCX; and (3) the Plan of Delegation of Functions from the PCX Parent to PCX Equities, are available for inspection at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its Original Notice with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. [6] The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Brandon Becker, Wilmer, Cutler, & Pickering, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated November 24, 1999 (''Amendment No. 1''). On January 10, 2000, the Exchange submitted the Form 19b–4 for Amendment No. 1 to the proposed rule change. *See* Letter from Kathryn Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX, to Kelly Riley, Attorney, Division, dated January 7, 2000. In Amendment No. 1, the Exchange submitted: (1) a letter amendment that changes provisions of the proposed rule language; (2) a summary of the proposed changes for implementing the PCX restructuring (Attachment No. 1 to Amendment No. 1); (3) a PCX Equities, Inc. Cross Reference Table (Attachment No. 2 to Amendment No. 1); and (4) The Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc. (Attachment No. 4 to Amendment No. 1).

[4] *See* Securities Exchange Act Release No. 42178 (November 24, 1999), 64 FR 68136.

[5] *See* Letter from Brandon Becker, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated January 7, 2000 (''Amendment No. 2''). In Amendment No. 2, the Exchange submitted answers to questions posed by the Division and made substantive to the proposed rule language, as amended by Amendment No. 1.

[6] *See supra* note 4.

the most significant aspects of Amendment Nos. 1 and 2 to the proposed rule change.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary of Proposed Rule Changes for Implementing the PCX Restructuring. The following summarizes the proposed PCX Equities rules as well as the proposed changes to the PCX Constitution and rules related to the restructuring of PCX. Part 1 contains a description of those rules proposed by PCX Equities to regulate the business conduct and practices of its ETP Holders, ETP Firms, Equity ASAP Holders, and associated persons. Detailed descriptions of those rules that reflect a significant departure from the pre-existing PCX Rules are provided. In addition, for proposed rules that are closely patterned after existing PCX rules, the Exchange indicates which PCX rule was the model and notes that only minor conforming word changes were made. Similarly, Part 2 provides a summary of changes to the PCX Constitution and Rules. The complete text of the proposed rules for PCX Equities and the changes to the PCX Constitution and Rules are available for inspection at the places specified in Item IV below.

a. *PCX Equities, Inc.* Following the restructuring, PCX Equities will adopt, subject to certain revisions, the applicable trading rules and standards of the PCX as they relate to the current equity trading business. Proposed Rules 1 through 3, which relate to qualifications for ETPs, Equity ASAPs and corporate governance, and Rule 10, which relates to disciplinary procedures, reflect significant departures from existing PCX Rules. The remaining rules are substantially similar to the current rules, unless noted otherwise. A discussion of the proposed PCX Equities rules follows.

Rule 1—Definitions

Proposed Rule 1 defines certain terms and references (*e.g.,* ETP Holder) used throughout the rules, and is intended to ensure uniformity in the use of such terms. In conjunction with the restructuring and the issuance of the equity trading permits, the PCX has developed the following new terms and incorporated them into Proposed Rule 1:

Proposed Rule 1.1(f)—The term ''Corporation'' shall mean PCX Equities, Inc., as described in the Corporation's Certificate of Incorporation and the PCX Equities Bylaws.

Proposed Rule 1.1(i)—The term ''Equity ASAP'' shall refer to a permit issued by the Corporation for effecting approved securities transactions principally over an electronic or automated system access program such as P/COAST, or any other electronic or automated trading system approved by the Corporation. Except as contemplated by proposed Rule 2.16(a)(3), an Equity ASAP does not confer trading privileges on any other trading facility of the Corporation, including but not limited to the trading floor, and therefore does not confer an Equity ASAP Holder with rights to employ or utilize trading floor specialists or floor brokers.[7]

Proposed Rule 1.1(j)—The term ''Equity ASAP Holder'' shall refer to a sole proprietor, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an Equity ASAP or an allied person of such an organization.[8] An Equity ASAP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation, and by all applicable rules and regulations of the SEC. An Equity ASAP Holder shall not have ownership or distribution rights in the Corporation. An Equity ASAP Holder will have limited voting rights to nominate two members to the Corporation's Board of Directors and one member to the Board of Governors of the PCX Parent. An Equity ASAP Holder will have status as a ''member'' of the PCX Parent as that term is defined in Section 3 of the Act.[9]

Proposed Rule 1.1(k)—The term ''ETP'' shall refer to an Equity Trading Permit issued by the Corporation for effecting approved securities transactions on the Corporation's trading facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization, which is a registered broker or dealer pursuant to Section 15 of the Act,[10] and which has been approved by the Corporation.[11]

Proposed Rule 1.1(l)—The term ''ETP Holder'' shall refer to a natural person, in good standing, who has been issued an ETP, or has been named as a Nominee by an ETP Firm. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act,[12] or a nominee or an associated person of a registered broker or dealer who has been approved by the Corporation to conduct business on the Corporation's trading facilities.[13] An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation, and by all applicable rules and regulations of the SEC. An ETP Holder shall not have ownership or distribution rights in the Corporation. An ETP Holder will have limited voting rights to nominate two members to the Corporation's Board of Directors and one member to the Board of Governors of the PCX Parent. An ETP Holder will have status as a ''member'' of the PCX Parent as that term is defined in Section 3 of the Act.[14]

Proposed Rule 1.1(m)—The term ''ETP Firm'' shall refer to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an ETP or upon whom an individual ETP Holder has conferred trading privileges on the Corporation's trading facilities pursuant to and in compliance with these Rules. An ETP Firm must be a registered broker or dealer pursuant to Section 15 of the Act.[15] An ETP Firm shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation and by all applicable rules and regulations of the SEC. An ETP Firm shall not have ownership or distribution rights in the Corporation. An ETP Firm will have limited voting rights to nominate two members to the Corporation's Board of Directors and one member to the Board of Governors of the PCX Parent. An ETP Firm will have status as a ''member'' of the PCX Parent as that term is defined in Section 3 of the Act.[16]

Proposed Rule 1.1(n)—The term ''Nominee'' shall mean an individual who is authorized by an ETP Firm, in accordance with proposed Rule 2.4, to conduct business on the Corporation's trading facilities and to represent such ETP Firm in all matters relating to the Corporation. As long as a nominee remains effective, the nominee will have status as a ''member'' of the PCX Parent as that term is defined in Section 3 of the Act.[17] A nominee shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the

[7] *See* Amendment No. 2, which clarifies the circumstances when Equity ASAPs may utilize floor traders to execute orders on the trading floor.

[8] *See* Amendment No. 2.

[9] 15 U.S.C. 78c(3)(A).

[10] 15 U.S.C. 78o.

[11] *See* Amendment No. 2.

[12] 15 U.S.C. 78o.

[13] *Id.*

[14] 15 U.S.C. 78c(3)(A).

[15] 15 U.S.C. 78o.

[16] *Id.*

[17] *Id.*

Corporation, and by all applicable rules and regulations of the SEC.

Proposed Rule 1.1(q)—The term ''PCX Parent'' shall refer to the Pacific Exchange, Inc., a Delaware corporation and national securities exchange as that term is defined by Section 6 of the Act.[18] The PCX Parent is the sole shareholder of the Corporation.

Proposed Rule 1.1(s)—The terms ''self-regulatory organization'' or ''SRO'' shall have the same meaning as set forth in the provisions of the Act relating to national securities exchanges.

Proposed Rule 1.1(t)—The term ''Trading Facilities'' shall refer to the Corporation's Los Angeles and San Francisco trading floors, office space provided by the Corporation to ETP Holders and ETP Firms in connection with their floor trading activities, and any an all electronic or automatic systems access programs provided by the Corporation to ETP Holders, ETP Firms and Equity ASAP Holders.

As noted above, ETP Holders and Equity ASAP Holders will not have ownership or distribution rights in PCX Equities. However, ETP Holders and Equity ASAP Holders will have limited voting rights and may nominate, in accordance with the procedures set forth in proposed Rule 3.2(b)(2)(C), two members to the PCX Equities Board and one member to the PCX Board of Governors. Unlike current PCX Rule 1.14 governing ASAP members, Equity ASAP Holders will have these limited voting rights.

In addition to the new terminology described above, PCX proposes to include in Proposed rule 1 the current PCX definitions for the terms set forth in the chart below. Subject to minor word changes reflecting the restructuring, the proposed rules in the chart below are substantially the same as the corresponding PCX rules.

Proposed new rule	Current PCX rule
Rule 1.1(a)—Affiliate	Rule 1.1(a)
Rule 1.1(b)—Allied Person	Rule 1.1(b)
Rule 1.1(c)—Approved Person	Rule 1.1(c)
Rule 1.1(d)—Associated Person	Rule 1.1(d)
Rule 1.1(e)—Control	Rule 1.1(e)
Rule 1.1(g)—Floor Trader	Rule 1.1(f)
Rule 1.1(h)—Good Standing	Rule 1.1(g)
Rule 1.1(o)—Non Resident Organization	Rule 1.1(m)
Rule 1.1(p)—Parent	Rule 1.1(n)
Rule 1.1(r)—Person	Rule 1.1(o)
Rule 1.1(u)—Wholly Owned Subsidiary	Rule 1.1(p)

Rule 2—Equity Trading Permits and Equity ASAPs

Proposed Rule 2 describes the application process, the qualification requirements and other requirements for holding an ETP on an Equity ASAP and is similar to the requirements and procedures now described in PCX Rule 1 and certain sections of the PCX Constitution. However, as the Exchange describes below, certain substantive changes have been made to reflect the characteristics of the new ETPs and Equity ASAPs. These substantive changes include the following:

Proposed Rule 2.2—In accordance with proposed Rule 2.2, an ETP may be issued to an individual, partnership, corporation, limited liability company or other organization that is a registered broker-dealer. As discussed under the rule 1 section, an ETP will authorized its holder to trade equity securities on any facility of PCX Equities, including the trading floors, P/COAST or OptiMark, as a registered or competing specialist, floor broker, or order flow firm. An ETP will not confer any rights to trade on the options facilities. Any ETP Holder that wishes to trade options must be approved for an obtain a PCX membership pursuant to PCX's standard application procedures.

Proposed Rule 2.3—In order to be consistent with the approach taken with respect to seat ownership, under proposed Rule 2.3(a), all firms that directly own ETPs are required to designate a natural person to hold their ETPs (*i.e.,* the ''Nominee'' or the ''ETP Holder''). Accordingly, whenever an ETP confers the right to vote (*e.g.,* election of the Nominating Committee, as discussed below), it is the ETP Holder, rather than the ETP Firm, which casts the vote. However, pursuant to proposed Rule 2.22(c) (as discussed below), the ETP Firm retains the right to replace the ETP Holder with another qualified nominee employed by the ETP Firm at any time. Therefore, since PCX Equities will use revocable proxies to conduct its votes, ETP Firms will be able to effectively control the voting process with respect to the ETPs they own in the same manner as PCX member firms control the voting process with respect to nominees today.

Proposed Rules 2.4, 2.5 and 2.6—Proposed rules 2.4, 2.5 and 2.6 would alter PCX's existing member approval process by authorizing the PCX Equities management—in place of a Membership Committee—to approve or reject ETP and Equity ASAP applicants. As described in rule 2.4(g), in the event that an application is rejected by PCX Equities, the applicant will have the opportunity to appeal the decision pursuant to proposed Rule 10. Furthermore, proposed Rule 2.5(b)(10) is being amended to reflect a new PCX Rule (current Rule 1.7(b)(9)) approved by the SEC on September 17, 1999 that will require off-floor traders for which PCX is the Designated Examining Authority to complete the Series 7 Exam.[19] Minor changes in terminology have been made to conform to the proposed restructuring.

Proposed Rule 2.16—Under proposed Rule 2.16. an Equity ASAP Holder may route orders electronically to the PCX Equities' facilities (*e.g.,* P/COAST). However, the Equity ASAP does not bestow on the holder the right to act in the capacity of a trading floor specialist

[18] 15 U.S.C. 78f.

[19] *See* Securities Exchange Act Release No. 41881, 64 FR 51822 (September 24, 1999). In Amendment No. 2, the Exchange amended proposed Rule 2.5(b)(10)(A–C) to reflect that the rule applies to Equity ASAPs as well as ETP Holers.

or floor broker. Like ETPs, Equity ASAPs will not confer any rights to trade on the options facilities. Any Equity ASAP Holder that wishes to trade options must be approved for an obtain a PCX membership pursuant to PCX's standard application procedures.

Proposed Rule 2.21—Pursuant to proposed Rule 2.21, an ETP or Equity ASAP will terminate upon the occurrence of the permit holder's expulsion, suspension without reinstatement, death, declaration of incompetency, dissolution, winding up or other cessation of business. An ETP or Equity ASAP Holder whose trading privileges are terminated must be current in all filings and payments of dues, fees and charges. If the ETP or Equity ASAP Holder fails to be current as required, the Corporation retains jurisdiction over the permit holder until such time as the permit holder is current.

In addition, when a Nominee of an ETP Firm ceases to be an employee of the ETP Firm, that person shall automatically cease to be a Nominee of the ETP Firm.[20] In that event, the ETP Firm may nominate another employee as its nominee ETP Holder. An ETP Firm upon which trading privileges are conferred shall continue to be responsible for all obligations, including, without limitation, dues, fees, and charges imposed by or due to the Corporation.

Proposed Rule 2.22—As described in proposed Rule 2.22(a) and (b), unlike current PCX memberships, ETPs and Equity ASAPs may not be purchased, sold or leased. Therefore, the PCX Rules 1.21 and 1.24 and sections of PCX Rules 1.22 and 1.23 relating to the purchase, sale, or lease of memberships have been deleted from the PCX Equities rules. Under proposed Rule 2.22(c), the only permissible transfers of ETPs are intra-firm transfers involving nominees employed by the same firm. A new nominee, unless he or she is a previously approved person or approved Allied Person of the ETP Firm, shall provide all information required for the Corporation to conduct an investigation of the nominee prior to his or her approval as a nominee.

Other than the substantive changes discussed above and minor conforming word changes that reflect the restructuring, each section of proposed Rule 2 (except Rule 2.21 and Rule 2.22) is substantially the same as the relevant corresponding PCX Rule or Article. The table below sets forth which PCX Rule or Article was used as a model for each section of proposed Rule 2.

Proposed new rule	Current PCX rule
Rule 2.1—Securities Business	Rule 1.2
Rule 2.2(a)—Qualifications and Application of Individual Applicants	Rule 1.4; Constitution Article VIII, Sec 1(a)
Rule 2.3—Qualification of Firm Applicants	Rule 1.5
Rule 2.4—Application Procedures	Rule 1.6
Rule 2.5—Denial of or Conditions to ETPs and Equity ASAPs	Rule 1.7
Rule 2.6—Publication of Approved ETP and Equity ASAP Applications	Rule 1.8
Rule 2.7—Revocable Privilege	Constitution Article VIII, Sec. 1(b)
Rule 2.8—No Liability for Using Trading Facilities	Constitution Article VI, Sec. 5
Rule 2.9—Corporation Not Bound by ETP Holder, ETP Firm or Equity ASAP Holder Agreements.	Constitution Article VIII, Sec. 1(c)
Rule 2.10—Only ETP Firms and Equity ASAP Holders to Trade Under Firm Name.	Constitution Article VIII, Sec. 1(d)
Rule 2.11—Sole Proprietors and Individual ETP Holders	Rule 1.10
Rule 2.12—ETP Firms and Equity ASAP Holders	Constitution Article VIII, Sec. 8(a)
Rule 2.13	Constitution Article VIII, Sec. 3(a)
Rule 2.14	Rule 1.11, Constitution Article VIII, Sec. 3(c)–(e) and Sec. 8(g)
Rule 2.15	Rule 1.12
Rule 2.16—Terms and Conditions Relating to Equity ASAPs	Rule 1.14
Rule 2.17—Responsibilities of Non-Resident Firms	Rule 1.16
Rule 2.18—Amendments to ETP Firms and Equity ASAP Holder Documents.	Rule 1.17
Rule 2.19—ETP Charges	Rule 1.18
Rule 2.20—Exemption from Registration Requirements	Rule 1.19
Rule 2.23—Employees of ETP Firms and Equity ASAP Holders Registration.	Rule 1.26
Rule 2.24—Trading Floor Employees of ETP Firms	Rule 1.27

Rule 3—Organization and Administration

Proposed Rule 3 is divided into three parts: Part I sets forth the organization and governance structure of PCX Equities. Part II outlines the responsibilities and authority of PCX Equities in the administration, interpretation, and enforcement of rules governing the business conduct and practices of individuals and firms issued ETPs and Equity ASAPs.[21] Part III addresses the obligations of ETP Holders, ETP Firms, and Equity ASAP Holders to pay dues, fees and charges as prescribed by the PCX Equities Board.

Part I—Committees

Proposed Rules 3.1 through 3.3 regarding Equity and Board committees were drafted using current PCX Rules as a starting point.[22] However, under the proposed rules, the use of a ''member'' committee structure will be substantially curtailed.

Proposed Rule 3.1—Proposed Rule 3.1 states that the Board of Directors may establish (1) one or more Board committees consisting of one or more directors of the Corporation and (2) one or more Equity committees consisting of people other than directors. As discussed in more detail below, although the PCX Equities Board may establish additional Equity Committees under this proposed rule, the proposed Bylaws and Rules of PCX Equities currently envision only a Nominating

[20] *See* Amendment No. 2.

[21] *See* Amendment No. 2.

[22] *See* PCX Rules 11.1(a)–(b); 11.2(a)–(b); 11.3—11.5; 11.6(b); 11.8(d); and PCX Constitution Articles II–V.

Committee and a Business Conduct Committee. Similarly, although the Board may establish additional Board Committees, the proposed rule currently contemplate only one—the Board Appeals Committee. *Proposed Rule 3.2(a)*—Proposed Rule 3.2(a) establishes the substantive and procedural rules for an Equity Committee conducting meetings and exercising its authority. In particular, proposed Rule 3.2(a), which is similar to existing PCX rules and procedures, discusses quorums, voting, conference call meetings, vacancies, the removal and resignation of committee members, eligibility for and appointment to Equity Committees, interested persons and subcommittees. Under the proposed rule, ETP Holders, Equity ASAP Holders and allied persons of ETP Firms or Equity ASAP Holders as well as public representatives may be appointed to serve on Equity Committees. No more than one person affiliated with the same ETP Firm or Equity ASAP Holder shall be eligible for service on the same Equity Committee. In a department from the PCX rules, proposed Rule 3.2(a) would vest authority in the Chief Executive Officer or such other designee of PCX Equities to appoint the members of Equity Committees (other than the Nominating Committee).

Proposed rule 3.2(b)(1)—Proposed Rule 3.2(b)(1) describes the functions and authority of the Business Conduct Committee. PCX Equities' disciplinary process will be similar to the existing PCX disciplinary process and will be governed by a Business Conduct Committee. Pursuant to the proposed rule, the Business Conduct Committee would have the following functions and authority: (1) Examine the business conduct and financial condition of ETP Holders, ETP Firms, Equity ASAP Holders and associated persons; (2) conduct hearings and render decisions in summary disciplinary actions and proceedings; (3) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Corporation has been committed; and (4) require the production of detailed financial reports of an ETP Holder, ETP Firm or Equity ASAP Holder and such other operational reports as it may deem relevant.

In addition, under this proposed rule, the Business Conduct Committee will have the authority to examine and subsequently suspend an ETP Firm, ETP Holder or Equity ASAP Holder if the person or entity is in violation of proposed Rule 4. Any such suspension is subject to review by the Board. Such review shall not operate as a stay of the suspension unless specifically allowed by the Board. A person or firm which experiences a reversal of the suspension imposed by the Committee shall be prohibited from instituting a lawsuit against the Corporation or the Committee members.

Finally, decisions of the Business Conduct Committee or sanctions imposed by the Regulatory Staff relating to disciplinary proceedings may be appealed in accordance with proposed Rule 10.

Proposed Rule 3.2(b)(2)—Proposed Rule 3.2(b)(2) describes the characteristics and functions of the Nominating Committee. Specifically, the Nominating Committee will have seven members consisting of six ETP Holders or Equity ASAP Holders and one public representative.

Members of this Committee will be nominated in accordance with the procedures set forth in proposed Rule 2.3(b)(2). This rule states that, prior to the expiration of its term, the Nominating Committee shall publish a slate of six eligible nominees for the committee. ETP and Equity ASAP Holders may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill the ETP/Equity ASAP positions. Upon written petition of 20 percent of the ETP and Equity ASAP Holders, the Nominating Committee shall nominate the additional candidates. The Chief Executive Officer shall appoint a person from the public to fill the public position on the Nominating Committee.

If there are more than six nominees to fill the ETP/Equity ASAP Holder positions, the Nominating Committee shall submit the nominees to the ETP and Equity ASAP Holders for election. Each ETP and Equity ASAP Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the ETP/Equity ASAP positions. The Board of Directors shall decide tie votes. If there are only six nominees to fill the ETP/Equity ASAP Holder positions, those six nominees shall be deemed elected to the Nominating Committee.

This Committee will nominate two nominees for the PCX Equities Board of Directors and one nominee for the PCX Board of Governors. In particular, the Nominating Committee shall publish the names of two ETP Holders, Equity ASAP Holders, or affiliated persons thereof, as its nominees for the Board of Directors of the Corporation and one ETP Holder, Equity ASAP Holder or person affiliated thereof as nominee for the PCX Board of Governors. The nominee for the PCX Board may be a person nominated to the PCX Equities Board. ETP and Equity ASAP Holders may submit a written petition to the Corporation to nominate additional eligible candidates to fill the ETP/Equity ASAP positions and, upon written petition of at least 20 percent of ETP and Equity ASAP Holders, the Nominating Committee shall also nominate the additional person(s). If there are three or more nominees for the Board of Directors and two or more nominees for the Board of Governors, the Nominating Committee shall submit the contested nomination(s) to the ETP and Equity ASAP Holders for selection. Each ETP and Equity ASAP Holder may select two nominees for contested seats on the Board of Directors and one nominee for contested seats on the Board of Governors. With respect to the contested positions, the two nominees for the Board of Directors and the nominee for the Board of Governors selected by the ETP and Equity ASAP Holders, shall be submitted by the Nominating Committee to the Board of Directors or the Board of Governors, as the case may be. Similarly, the Nominating Committee shall submit uncontested nominees to the Board of Directors or the Board of Governors,. The respective Board at its first meeting following the election shall decide tie votes.

Proposed Rule 2.3—Under this proposed rule, each Equity Committee shall have such other powers and duties as delegated to it by the Board of Directors. Each Equity Committee is subject to the control, review, and supervision of the Board of Directors.

Proposed Rule 3.3—The proposed rules envision only one Board Committee—the Board Appeals Committee. Under proposed Rule 3.3(a)(1), the PCX Equities Board may appoint one or more Appeals Committees to conduct reviews of matters subject to the applicable provisions of proposed Rules 3.2(b)(1)(C) or proposed Rule 10. The PCX Equities Board will determine the size of any Appeals Committee that it appoints, and an Appeals Committee may be composed of only one member. Each Appeals Committee will contain public directors. Subject to proposed Rule 10, decisions of the Board Appeals Committee shall constitute the final action of the Corporation, unless the PCX Board remands the proceedings.

Part II—Regulation

As discussed in more detail below, proposed Rules 3.4 and 3.5 describe the self-regulatory responsibilities of the PCX with regard to PCX Equities as well

as the PCX's delegation of authority to PCX Equities.[23]

Proposed Rule 3.4—As set forth in proposed Rule 3.4, the PCX Parent, as the registered SRO, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary. Notwithstanding the delegation of authority to the subsidiary described in proposed Rule 3.5, PCX will be required to review and ratify any rule changes adopted by the PCX Equities Board before such rule change becomes final action.

Proposed Rule 3.5—Under proposed Rule 3.5,[24] except as otherwise provided in the Bylaws, Rules, and procedures of PCX Equities, the Chief Regulatory Officer or such other designated officer of PCX Equities will have the following delegated authority:

- To establish and interpret rules and regulations for ETP Holders, Equity ASAP Holders, ETP Firms or associated persons including, but not limited to trading rules, fees, access to and use of system facilities, and arbitration procedures.
- To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders, Equity ASAP Holders, ETP Firms and associated persons. This includes, but is not limited to, the following: (1) arbitration of disputes between ETP Holders, Equity ASAP Holders, ETP Firms or associated persons arising from transactions on the facility; (2) financial responsibility; (3) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders, Equity ASAPs, ETP Firms or associated persons in general; and (4) qualification requirements for ETP Holders, ETP Firms or Equity ASAP Holders and associated persons.
- To take necessary or appropriate action to assure compliance with the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules and regulations that the Corporation has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.
- To administer programs and systems for the surveillance and enforcement of rules governing the conduct and trading activities of ETP Holders, Equity ASAP Holders, ETP Firms, and associated persons.
- To administer the Corporation's disciplinary programs, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- To examine and investigate ETP Holders, Equity ASAP Holders, ETP Firms and associated persons to determine if they have violated the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules, and regulations that the Corporation has the authority to administer, interpret, or enforce.
- To place restrictions on the business activities of ETP Holders, Equity ASAP Holders, ETP Firms and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.
- To conduct arbitrations, mediations and other dispute resolution programs.
- To appoint Trading Officials that shall be responsible for the general supervision of the conduct and dealings of ETP Holders, Equity ASAP Holders, ETP Firms and associated persons on the trading facility. These duties include, but are not limited to, the following: (1) arbitrate differences between ETP Holders, Equity ASAP Holders, ETP Firms or associated persons arising from transactions on the trading facility; (2) supervise all connections or means of communication with the trading facility, which may require the discontinuance of any such connection or means of communication that is deemed contrary to the welfare or interest of the Corporation; (3) issue a Floor Citation when it appears that a Minor Rule Plan violation has occurred as specified in Rule 10; (4) declare a ''fast market'' or invoke a trading halt in a security due to an influx of orders or other unusual market conditions or circumstances; (5) take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market; and (6) supervise and regulate the operation of ITS, or any other application of the system during active openings, heavy trading and unusual situations.
- To administer or enforce policies and Rules of the Corporation (including federal and state regulations) governing the initial and continued listing or trading of securities on the Corporation.

The aforementioned authority delegated to the Chief Regulatory Officer represents a significant departure from existing practice in that several of these responsibilities and functions currently reside with the Equities Floor Trading Committee.[25] Following the restructuring, PCX Equities intends to dissolve the Equity Floor Trading Committee.

Proposed Rule 3.6—Subject to minor word changes, proposed Rule 3.6 regarding surveillance agreements is the same as existing PCX Rule 14.1.

Part III—Dues, Fees and Fines

Other than minor conforming word changes, proposed Rules 3.7 through 3.9 are the same as the current PCX Constitution Article XIV, Section 1. Under these rules, the PCX Equities Board may impose reasonable fees, assessments, charges or fines to be paid by ETP Holders, ETP Firms or Equity ASAP Holders. Prior to implementing the restructuring, PCX will file with the Commission a rule proposal to change its Schedule of Fees and Charges for services provided by PCX Equities.

Rule 4—Capital Requirements, Financial Reports, and Margins

Proposed Rule 4, which sets forth the net capital, financial reporting and margin requirements for ETP Holders, ETP Firms and Equity ASAP Holders, has been adapted from current PCX Rule 2. Only minor conforming changes in terminology have been made to the current PCX rules. In addition, because current PCX Rules 2.5 [26] and 2.8(a) [27] apply to options trading, the PCX has not incorporated those rules into proposed Rule 4.

Rule 5—Listings

Proposed Rule 5, which describes the requirements for listing, has been adapted from current PCX Rules 3.1 through 3.5. Other than minor conforming word changes made to reflect the circumstances of the restructuring, only two substantive changes have been made to PCX Rules 3.1 through 3.5. The first substantive change involves the transfer of authority over listing issues from the Equity Listing Committee to the PCX Equities management. Under the proposed rules,

[23] *See also* The Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc., which is available for inspection and copying at the Commission and the PCX and was included as Attachment No. 4 to Amendment No. 1.

[24] *See* Amendment No. 2, which documents changes to the Original Notice and Amendment No. 1.

[25] *See* Article IV, Sec. 6(b) of the current PCX Constitution.

[26] PCX Rule 2.5 states that ''[a] Clearing member issuing a Letter of Guarantee for one or more Market Makers must at all times be in compliance with the net capital requirements of the Options Clearing Corporation and with the capital requirements of securities laws as they may exist from time to time.''

[27] PCX Rule 2.8(a) states, in part, that ''[t]he following members are exempt from subsections (b), (c) and (d) of Rule 2.1: any Floor Broker, Market Maker in listed options, or Lead Market Maker in listed options, registered with the Exchange in any such capacity.

PCX Equities management will have the authority to: prescribe rules and procedures for listing securities; approve listing applications; and suspend dealings in, or remove securities from, listing. The Equity Listing Committee, which currently performs these functions for the PCX, will be dissolved once PCX Equities is formed.

In addition, current PCX Rules 3.6 and 3.7, which govern the initial and continued listing of equity and index options, will not be incorporated into the proposed rules because they are not applicable to PCX Equities' business.

Rule 6—Business Conduct

Proposed Rule 6 consolidates various equity-related rules that address business practices, ethical standards, and prohibited acts contained in the existing PCX Rules 2, 4 and 5 and the PCX Constitution. Other than minor conforming word changes that reflect the restructuring, each section of proposed Rule 6 is substantially the same as the relevant corresponding PCX rule or Article. The table below explains which PCX rule or Article was used as a model for each section of proposed Rule 6.

Proposed new rule	Current PCX rule
Rule 6.1—Adherence to Law	Constitution Article XI, Sec. 1
Rule 6.2—Prohibited Acts	Constitution Article XI, Sec. 2(a)–(f)
Rule 6.3—Prevention of the Misuse of Material, Nonpublic Information	Rule 2.6(e)
Rule 6.4—Rumors	Rule 4.6(b)
Rule 6.5—Manipulation	Rule 4.6(a)
Rule 6.6—Front-running of Block Transactions	Rule 5.8(k)
Rule 6.7—Limitations on Trading Because of Customer Orders [28]	Rules 4.5(a)–(c)
Rule 6.8—Discretionary	Rule 4.9
Rule 6.9—Excessive Trading	Rule 4.4
Rule 6.10—Taking or Supplying Securities to Fill Customer's Order	Rule 4.11
Rule 6.11—ETP Holders Holding Options	Rules 4.7(a) and 4.8(b)
Rule 6.12—Disclosure of Financial Arrangements	Rule 4.18(a)
Rule 6.13—Joint Accounts	Rule 4.10(a)–(b)
Rule 6.14—Disciplinary Action By Other Organizations	Rule 4.13
Rule 6.15—Officers and Employees Restricted	Rule 4.17(a)
Rule 6.16—Miscellaneous Prohibitions	Rule 4.6(c)

[28] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–99–11) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 4.5(a)–(c).

Finally, current PCX Rule 4.19 will be omitted from inclusion in the proposed rules as it pertains to an exemption provided to short sales effected by options market makers in Nasdaq National Market securities.

Rule 7—Equities Trading

Proposed Rule 7 is closely patterned after the PCX's existing equity trading rules. However, as discussed below, certain changes have made. First, the proposed rule reorganizes the PCX equity trading rules (primarily current PCX Rule 5) to make it easier to locate and understand those provisions. The proposed new rule consists of twelve sections:

Section 1. Definitions and General Provisions
Section 2. Admission to and Conduct on the Trading Floor
Section 3. Units of Trading, Bids, Offers and Quotations
Section 4. ETP Holders Acting as Brokers
Section 5. ETP Holders Acting as Specialists
Section 6. ETP Holders Acting as Odd-lot Dealers
Section 7. Trading Practices and Procedures
Section 8. Contracts in Securities
Section 9. Intermarket Trading System Plan
Section 10. Automatic Execution Systems
Section 11. Special Offerings
Section 12. Exchange Distributions

In addition to the reorganizational changes,[29] as described in more detail below, existing trading rules have been restated and clarified and obsolete references have been deleted.

Proposed Rule 7.1—Several definitions and references contained in current PCX Rule 4.1 have been incorporated into proposed Rule 7.1(a). However, current PCX Rules 4.1(a)–(d) and (h) have not been incorporated into this new rule because the Exchange believes that these terms either do not apply to PCX Equities or are superfluous.[30]

Proposed Rule 7.8—Proposed Rule 7.8 which pertains to the admission to and conduct on the trading floor of ETP Holders, employees of ETP Firms, and visitors, clarifies existing PCX Rules 5.1(e) through (g) and 5.16(a), and codifies current policies and procedures. In addition, current PCX Rules 4.12, 5.1(a) and 5.1(c) and (d), which govern the activities of floor clerks, have been incorporated into this Rule 7.8 as commentaries.

Proposed Rule 7.21—Proposed Rule 7.21 is adapted from current PCX Rule 4.21 (Floor Broker Error Accounts).

Proposed Rule 7.22—The Exchange believes that proposed Rule 7.22(d) adequately covers the appeals process for an applicant specialist that is denied appointment as a registered specialist by the Corporation. Therefore, current PCX Rules 5.27(h) through (k) are superfluous because any request for an appeal by an applicant specialist will be subject to the applicable provisions of proposed Rule 10.14.

Proposed Rule 7.29—Proposed Rule 7.29 (current PCX Rule 5.37), relating to the evaluation of specialist performance, states that the Corporation, rather than the Equity Allocation Committee, will evaluate all registered specialists on a quarterly basis. Once the restructuring is effective, the Equity Allocation Committee will be dissolved and the Corporation will be responsible for allocating and reallocating issues and for evaluating and monitoring the performance of specialists.

Proposed Rule 7.44—Proposed Rule 7.44 is adapted from current PCX Rule 4.20 (Chinese Wall Procedures for Specialists).

Proposed Rule 7.47—Proposed Rule 7.47 is adapted from current PCX Rule

[29] *See* Amendment No. 2.

[30] *See, e.g.*, Rule 4.1(a) states that "Exchange shall mean the Pacific Exchange, Inc., including all the operations of the Exchange and, when used with reference to the administration of any rule, means either the Board of Governors or the officer, employee or committee to whom appropriate authority to administer such rule has been delegated by the Board pursuant to the provisions of the Exchange Constitution."

4.22 (Trading Halts Due to Extraordinary Market Volatility).

Proposed Rule 7.51—Current PCX Constitution Article XI, Sections 1(a) through (c), which relate to settlement of securities contracts, will be added as new Rule 7.51.

Proposed Rule 7.54—Current PCX Rules 4.14 through 4.16 regarding marking to the market will be added as new Rule 7.54.

Proposed Rule 7.71–7.78—Current PCX Rules 15.1 through 15.8 regarding OptiMark will be added as new Rules 7.71 through 7.78.

Other than the substantive changes discussed above and mirror conforming word changes that reflect the restructuring, each section of proposed Rule 7 is substantially the same as the relevant corresponding PCX rule or Article. The table below describes which PCX rule or Article was used as a model for each section of proposed Rule 7.

Proposed new rule	Current PCX rule
Rule 7.1—Definitions	Rule 4.1
Rule 7.2—Hours of Business	Rule 4.2
Rule 7.3—Holidays	Rule 4.3
Rule 7.4—Types of Orders	Rule 5.2(a) & (c)
Rule 7.5—Authority of Trading Officials	Rule 5.15
Rule 7.6—Commissions	Rules 5.39–5.41
Rule 7.7—Ex-Dividend or Ex-Right Dates	Rule 5.7
Rule 7.8—Trading Floor Standards	Rules 4.12, 5.1(a), (c)–(e), (g); 5.16(a); 6.2(c) [see also discussion in text]
Rule 7.9—Trading Units	Rule 5.3(a)
Rule 7.10—Trading Differentials	Rule 5.3(b) & (c)
Rule 7.11—Transmission of Bids and Offers	Rules 5.6(d) & (e)
Rule 7.12—Recognized Quotations	Rule 5.6(a) & (f)
Rule 7.13—Bid or Offer Deemed Regular Way	Rule 5.6(b)
Rule 7.14—Trading in ''When Issued/Distributed'' Securities	Rule 5.9(b)
Rule 7.15—Execution Price Binding	Rule 5.11(a)
Rule 7.16—Cancellation of Revisions in Transactions	Rule 5.11(b) & (c)
Rule 7.17—Manner of Bidding and Offering	Rule 5.5(a)
Rule 7.18—Types of Bids and Offers	Rules 5.6(c); 5.9(a)
Rule 7.19—Priority and Precedence of Bids and Offers [31]	Rule 5.8(a)–(g), (i)
Rule 7.20—Cabinet Dealings	Rule 5.5(b) & (c)
Rule 7.21—Error Accounts	Rule 4.21
Rule 7.22—Registration of Specialist	Rule 5.27
Rule 7.23—Registered Specialist's Assistant	Rule 5.28(f)
Rule 7.24—Responsibilities of Specialists [32]	Rule 5.28(c)–(e); Rule 5.29(f), (g), (j); 5.30(e)
Rule 7.25—Specialist's Coordination [33]	Rule 5.30
Rule 7.26—Specialist Joint Accounts	Rule 5.33(e)
Rule 7.27—Disclosure of Specialists' Orders Prohibited [34]	Rule 5.29(d)
Rule 7.28—Dealings by Specialist	Rule 5.33(a), (b), (h)
Rule 7.29—Evaluation of Specialist Performance	Rule 5.37
Rule 7.30—Competing Specialist Program [35]	Rule 5.35
Rule 7.31—Alternate Specialist	Rule 5.36
Rule 7.32—Remote Trading Access Program [36]	Rule 5.38
Rule 7.33—Members Acting as Odd Lot Dealers	Rules 5.34; 5.4
Rule 7.34—Order Identification	Rule 5.13(c) & (d)
Rule 7.35—Orders Requires to Be in Written Form	Rules 5.2(b), 5.8(h), 5.13(e), 5.28, 5.29(a), (b) & (h)
Rule 7.36—Record of Orders	Rule 5.29(e)
Rule 7.37—Reporting Duties	Rule 5.12
Rule 7.38—Confirmation of ''GTC'' Orders	Rule 5.29(c)
Rule 7.39—Reducing Orders Ex-Dividend	Rule 5.29(i)
Rule 7.40—Short Sales	Rule 5.18
Rule 7.41—Crossing Orders	Rule 5.14
Rule 7.42—Primary Market Protection ''PMP''	Rule 5.32
Rule 7.43—Stop Loss Orders	Rule 5.8(j)
Rule 7.44—Chinese Wall Procedures for Specialists	Rule 4.20
Rule 7.45—Stock Option Transactions	Rule 5.33(d) & (f)
Rule 7.46—Trading Halats and Suspensions [37]	Rule 5.31
Rule 7.47—Trading Halts Due to Extraordinary Market Volatility	Rule 4.22
Rule 7.48—Arbitrage Prohibited	Rule 5.10
Rule 7.49—Over-the-Counter Executions of Equity Securities Transactions.	Rules 5.43–5.49
Rule 7.50—Definitions and General Provisions	Rule 5.9(b)(3) & (4); Rule 5.13(i)
Rule 7.51—ETP and Equity ASAP Contracts	Constitution Article IX, Sec. 1
Rule 7.52—Exchange of Tickets and Comparison	Rule 5.13(a)–(b), (f)–(h)
Rule 7.53—Delivery of Securities	Rule 5.9(c) & (d)
Rule 7.54—Marking to Market	Rules 4.14–4.16
Rule 7.55—Disagreement	Rule 5.55
Rule 7.56—Suspension or Expulsion	Rule 5.56
Rule 7.57—Normal Buy-Ins	Rule 5.57
Rule 7.58—Re-transmission of Notice	Rule 5.58
Rule 7.59—Notice on Less Than Full Amount	Rule 5.59
Rule 7.60—Liability Where Contract Closed	Rule 5.60
Rule 7.61—Notice of Closing	Rule 5.61

Proposed new rule	Current PCX rule
Rule 7.62—Duty of Member Giving Notice to Close	Rule 5.62
Rule 7.63—Method of Closing	Rule 5.63
Rule 7.64—Buy-ins Where Securities in Transfer	Rule 5.64
Rule 7.65—Over-the-Counter Securities	Rule 5.65
Rule 7.66—Intermarket Trading System Plan	Rule 5.20
Rule 7.67—ITS ''Trade-Throughs'' and ''Locked Markets''	Rule 5.21
Rule 7.68—Block Trade Policy	Rule 5.22
Rule 7.69—Liability of Corporation Relating to Operation of ITS	Rule 5.23
Rule 7.70—Pacific Computerized Order Access System (''P/COAST'') [38].	Rule 5.25
Rule 7.71—Definitions	Rule 15.1
Rule 7.72—Access	Rule 15.2
Rule 7.73—Entry of Profiles and Generation of Orders	Rule 15.3
Rule 7.74—Order Execution and Reporting	Rule 15.4
Rule 7.75—Hours of Operation	Rule 15.5
Rule 7.76—Errors	Rule 15.6
Rule 7.77—Trading Suspensions and Halts	Rule 15.7
Rule 7.78—Limitation of Liability	Rule 15.8
Rule 7.79—Approval	Rule 5.51
Rule 7.80—Exchange Distribution	Rule 5.53

[31] *See* Amendment No. 2, which deleted rule language proposed in other PCX filings (SR–PCX–99–06 and SR–PCX–99–07) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.8(a)–(g) and (i).

[32] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–99–11) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.28(c)–(e); Rule 5.29(f), (g), (j); and Rule 5.30(e).

[33] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–99–06) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.30.

[34] *See* Amendment No. 2, which deleted rule language proposed in other PCX filings (SR–PCX–99–06 and SR–PCX–99–11) that is currently pending with the Commission.

[35] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–99–07) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.35.

[36] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–98–41) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.38.

[37] *See* Amendment No. 2, which deleted rule language proposed in other PCX filings (SR–PCX–99–06 and SR–PCX–99–07) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.31.

[38] *See* Amendment No. 2, which deleted rule language proposed in another PCX filing (SR–PCX–99–07) that is currently pending with the Commission. This proposal now reflects the current language found in PCX Rule 5.25.

Rule 8—Trading of Certain Equity Derivatives

Proposed Rule 8, which describes the trading requirements for currency and index warrants and portfolio depositary receipts, is substantially the same as current PCX Rule 8, except for minor conforming word changes made to reflect the restructuring and the deletion of provisions relating to the trading of FLEX and Bounds options (current PCX Rules 8.100 and 8.200, respectively) because they are not applicable to PCX Equities' business.

Rule 9—Conducting Business with the Public

Proposed Rule 9, which governs how ETP Holders, ETP Firms and Equity ASAP Holders must conduct business with the public, is patterned after existing PCX Rule 9. Except for minor changes in terminology, the proposed rule is substantially the same as the existing rule.

Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals

Proposed Rule 10 describes the disciplinary process for PCX Equities. PCX Equities' disciplinary process will be similar to the existing PCX disciplinary process (including summary sanction procedures under the Minor Rule Plan) and will be governed by the Business Conduct Committee. Therefore, aside from conforming word changes and the substantive changes discussed below, proposed Rule 10 will be closely modeled after existing PCX Rule 10.

The Business Conduct Committee will, in accordance with proposed Rule 3.2(b)(1)(A), have the following authority:

- To conduct hearings and render decisions in summary disciplinary actions and proceedings.
- To impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Corporation has been committed.
- To examine the business conduct and financial condition of ETP Holders, ETP Firms, Equity ASAP Holders, and associated persons.
- To require the production of detailed financial reports of an ETP Holder, ETP Firm, or Equity ASAP Holder and such other operational reports as it may deem relevant.
- To suspend any ETP Holder, ETP Firm, or Equity ASAP Holder for failure to comply with the financial and reporting requirements in proposed Rule 4.

Any disciplinary sanctions imposed by the Business Conduct committee may be appealed to the PCX Equities Board Appeals Committee. Decisions of the Board Appeals Committee may be appealed to the PCX Board of Governors and subsequently to the Commission.

Proposed Rules 10.1 through 10.4 reflect several rule amendments previously approved by the PCX Board of Governors, which are now pending Commission approval.[39] The pending amendments to the disciplinary proceedings propose to: (1) codify the independent function of the Regulatory Staff; (2) clarify what communications are improper in the context of pending investigations or disciplinary proceedings; (3) provide the Regulatory Staff with the ability to issue formal complaints for the alleged violations of Exchange rules; (4) permit qualified persons who are not members to serve on hearing panels; and (5) codify procedures relating to hearing panelists' conflicts of interest.

Notwithstanding the above, the Exchange proposes to make additional

[39] *See* Exchange Act Release No. 42384 (February 3, 2000), 65 FR 6675 (February 10, 2000) (File No. SR–PCX–99–10).

changes to its disciplinary rules before the implementation of the restructuring. Set forth below is a summary of the proposed substantive amendments to existing PCX Rule 10)

Proposed Rule 10.4(a)—Restates that the Chief Regulatory Officer or such other delegee(s) will have the authority to review disciplinary proceedings and to determine whether there is probable cause to issue a formal complaint.

Proposed Rule 10.4(c)—Former Rule 10.5 has been moved to new Rule 10.4(c) and the reference to the Hearing Panel is replaced with Business Conduct Committee.

Proposed Rule 10.5(a)—Permits the Business Conduct Committee to appoint one or more members to serve on the ''Conduct Panel'' with respect to disciplinary proceedings that are not resolved through the settlement process or summary proceeding.

Proposed Rule 10.8(a)—Defines and clarifies the procedures and timetables for the respondent to follow when requesting the review of a decision by the Conduct Panel appointed by the Business Conduct Committee.[40] The respondent may appeal to the Board at any time within fifteen calendar days after the decision has been served.

Proposed Rule 10.8(b)—Provides that the Board Appeals Committee may appoint a Board Appeals Committee Panel (''Appeals Panel'')[41] to review the decision rendered by the Conduct Panel. The composition of the Appeals Panel will be determined by the Board Appeal Committee in accordance with proposed Rule 3.3(a)(1)(A).

Proposed Rule 10.8(c)—Provides that decisions of the Board Appeals Committee may be appealed to the PCX Board of Governors. The PCX Board's review is confined to the issues raised by the respondent's written petition for review.

Proposed Rule 10.8(d)—In reviewing the decision of the Board Appeals Committee, the PCX Board may, on its own initiative, order review of the decision after notice of such decision has been served on the respondent. If the PCX Board does not order review of the decision, the decision of the Appeals Panel will become final.

Proposed Rules 10.12 and 10.13—The proposed rules relating to disciplinary action pursuant to the PCX Equities' Minor Rule Plan, as well as the summary sanction procedures, are substantially the same as current PCX Rules 10.13 and 10.14. However, the existing PCX provisions relating to options trading have not been included in the proposed rules because they are not applicable to PCX Equities' business.

Proposed Rules 1.14(a)–(m)—Current PCX Rules 11.7(a)–(n) regarding appeals for non-disciplinary matters will be incorporated into proposed Rule 10.14. Proposed Rule 10.14 provides the procedures for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are: (1) denial of an ETP or Equity ASAP; (2) the barring of any person from becoming associated with an ETP Firm or Equity ASAP Holder; (3) the suspension or cancellation of ETP or Equity ASAP trading privileges; (4) the prohibition or limitation of access to services provided by the Corporation, or the services of any ETP Firm or Equity ASAP Holder; or (5) denial of an applicant specialist for appointment as a registered specialist.

Rule 11—Expulsion, Suspension and Reinstatement

Proposed Rule 11 clarifies, restates, and reorganizes existing PCX Rules and procedures regarding certain suspensions, cancellations, bars and prohibitions on access to the PCX Equities services and facilities. The following describes the proposed rules and how they differ from existing rules, where applicable.

Proposed Rules 11.1(a)–(b)—Proposed Rules 11.1(a)–(b) incorporate a modified version of current PCX Constitution, Article X, Sections 1(a) and (b). This rule requires an ETP Holder, ETP Firm or Equity ASAP Holder to give prompt written notice to the Corporation if it is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, fails to perform contracts or becomes insolvent, or if any associated person of such ETP Firm or Equity ASAP Holder is similarly expelled or suspended by an SRO.

Proposed Rules 11.2(a)–(b)—PCX has reorganized and simplified its rules relating to summary and non-summary disciplinary proceedings. The proposed rules have been adapted from NASD Rule 9510 Series and PCX Constitution, Article X, Section 2 and Article XI, Section 3(c). The proposed rules are intended to eliminate any potential ambiguities in the procedures related to summary and non-summary suspensions by expressly identifying the grounds for imposing such suspensions.

Proposed Rule 11.2(c), Commentary .01—Proposed Rule 11.2(c) provides that action taken pursuant to Rule 11.2(a) shall also be subject to the applicable provisions of Rule 10.14. Furthermore, under proposed Commentary .01, the Corporation will be required to notify the Commission in the event that it determines to take summary action pursuant to Rule 11.2

Proposed Rule 11.3—Proposed Rule 11.3 states that an ETP Holder, ETP Firm or Equity ASAP Holder, or associated person thereof loses all rights and trading privileges when those privileges are suspended or canceled by the Corporation. However, such person or organization shall remain subject to the disciplinary power of the Corporation.

Proposed Rule 11.4—Proposed Rule 11.4 states that an ETP Holder, ETP Firm or Equity ASAP Holder, or associated person thereof whose trading privileges are suspended may be disciplined by the Corporation for any offense committed either before or after the announcement of the suspension.

Proposed Rule 11.5—Other than minor word changes, proposed Rule 11.5 is modeled closely after the current PCX Constitution, Article X, Section 3. Proposed Rule 11.5 states that a person or organization whose trading privileges have been suspended must immediately allow the Corporation to investigate its affairs.

Proposed Rule 11.6—Other than minor word changes, proposed Rule 11.6 is modeled closely after the current PCX Constitution, Article X, Section 4. Proposed Rule 11.6 describes the grounds for canceling trading privileges.

Proposed Rule 11.7—Other than minor word changes, proposed Rule 11.7 is modeled closely after the current PCX Constitution, Article X, Section 5. Proposed Rule 11.7 describes the reinstatement process after trading privileges have been suspended.

Proposed Rule 11.8—Proposed Rule 11.8 provides that if any ETP Holder, ETP Firm, Equity ASAP Holder, or any associated person is suspended and fails or is unable to apply for reinstatement or fails to obtain reinstatement, trading privileges conferred by an ETP or Equity ASAP will terminate.

Rule 12—Arbitration

Proposed Rule 12, the arbitration rule, has been patterned closely after current PCX Rule 12. Other than the changes discussed below, only minor changes in terminology have been made to conform the proposed rule to the circumstances of the proposed restructuring.

The PCX notes that it is proposing to adopt new Rule 12.1, replacing current

[40] The Exchange is proposing to make certain technical changes throughout the text of the proposed Rule 10 for clarification purposes (*e.g.,* changing the reference to calendar days).

[41] The body conducting the review, either the Board Appeals Committee itself or the Appeals Panel is also referred to in the proposed rules as the Review Board.

Commentary .01. Proposed Rule 12.1 will define certain terms used in the context of this Rule, including the following:

1. The term ''ETP'' shall mean both ETP and Equity ASAP permits.
2. The terms ''service'' or ''serve'' shall mean effecting the delivery of a document to persons via first class mail, overnight delivery, hand delivery, or facsimile.
3. The term ''associated person'' shall also include ''affiliated'' person ''approved person'' and ''allied person.''
4. The term ''Director of Arbitration'' shall mean any person appointed or designated by the Corporation's Chief Executive Officer to direct the Corporation's arbitration program.

The Exchange is also proposing to renumber current Commentaries .02 and .03 of Rule 12.1 as subsections (h) and (i), respectively. Commentary .01 of current PCX Rule 12.8(e) is being renumbered as 12.9(g).

Rule 13—Liability of Directors and Corporation

Proposed Rule 13 has been adapted from current PCX Rule 13. Only minor changes in terminology have been made to conform the rule to the proposed restructuring.

Equity Floor Procedure Advices

This section of the proposed rules contains the various equity floor procedures and policies that have been adopted over time. These proposed rules have been adapted from the existing ones, which were previously approved by the Commission. These policies will apply to ETP Holders, ETP Firms, clerks or such other persons employed by ETP Firms that conduct business on the trading floor. Only minor changes in terminology have been made to the existing floor procedures and policies.

b. *Pacific Exchange, Inc. Constitution and Rules.* Summarized below are the proposed amendments to the PCX Constitution and Rules. These changes primarily involve the deletion of equities-related language since the PCX Parent will only carry on the options trading business. Even though PCX Parent will have a separate set of rules applicable to options, it will continue to have ultimate responsibility in the administration and enforcement of rules governing the operation of PCX Equities.

Rules of the Pacific Exchange, Inc. (''PCX Parent''). The current rules for the PCX are essentially the same except for the following rules that have been deleted because they pertain to the equities business:

Rule 2—Capital Requirements
- Rules 2.1(b)–(d)—Minimum Net Capital for Specialist Firms
- Rule 2.2—Specialist Post Capital

Rule 4—General Trading Rules
- Rule 4.5—Limitations on Members' Trading Because of Customers' Orders
- Rule 4.7—Members Holding Options
- Rule 4.8—Specialist (Report of Options)
- Rule 4.11—Taking or Supplying Securities Named in Order
- Rules 4.14–4.16—Marking to the Market
- Rule 4.20—Chinese Wall Procedures for Specialists

Rule 5—Equity Trading Rules [42]
- The text for the following equity rules will be deleted: Rules 5.1(b)–(d), 5.1(g)–5.2(a), 5.2(c)–5.8(j), and 5.9–5.65.

Rule 10—Disciplinary Proceedings and Appeals
- Rules 10.13(i) and (k)(ii)—Minor Rule Plan: Equity Minor Trading Rule Violations

Rule 11—Committees of the Exchange
- Rules 11.9(a)–(c)—the Equity Listing, National Market System Advisory, and the Equity Marketing Committees have been deleted.

Rule 15—PCX Application of the OptiMark System
- The rules governing the OptiMark trading system have been removed and incorporated into proposed new Rules 7.71 through 7.78 for PCX Equities.

Equity Floor Procedure Advices
- Floor Procedure Advices 1–A through 3–A have been removed and incorporated into the proposed new rules for PCX Equities.

The Exchange is also proposing to modify the text of several PCX rules so that they will be consistent with the operation of PCX Equities. First, the proposal would amend the text of current PCX Rule 1.1(f) to clarify that ETPs and Equity ASAPs issued by PCX Equities will not confer any rights to trade on the options facilities.

Second, the Exchange is proposing to eliminate references to the P/COAST and OptiMark trading systems in PCX Rule 1.14(a). These trading systems are facilities of PCX Equities and access to such systems is restricted to ETP and Equity ASAP Holders.

Third, the Exchange is proposing to retain its rules (current PCX Rule 3) relating to the initial and continued listing of equity securities. Since PCX Equities itself is not registered as a national securities exchange, the Exchange believes that equity securities will continue (for legal and regulatory purposes) to be listed on PCX Parent. Accordingly, the federal and state exchange exemptions applicable to listings on PCX Parent will continue to apply so as to mitigate any misconceptions regarding the existence of such exemptions, as well as the administration of the Exchange's listings program.

Fourth, as discussed earlier, the proposed amendments pertaining to the rules and procedures for listing and delisting securities are also reflected in Rule 3.

Constitution of Pacific Exchange, Inc. The proposed amendments to the PCX Constitution are as follows: First, Article I, Sections 1 and 2, and Article II, Section 1(b) have been modified to reflect the separation of the equities operation (into PCX Equities) from the PCX Parent options business. As amended, the PCX Parent's principal place of business and the place of its annual meeting will be in San Francisco.

Second, the Exchange proposes to amend Article III, Section 2(a) relating to the annual election of Governors.[43] As amended, this provision will require that there be seven Governors in each of the three classes specified, and that such Governors comprising each class will have terms expiring at the Annual Meeting in 2002, 2003, and 2004, respectively. The Exchange proposes this rule change to make Article II, Section 1(a) consistent with Article III, Section 2(a), which sets minimum requirements for the composition of the Board of Governors.

Third, the Exchange proposes to amend Article III, Section 2(b) so that of the Governors in each of the classes specified in Article II, Section 2(a), at least one will be a member of the Exchange; at least one will be an office member or office allied member of the Exchange; and at least three will be representatives of the public.[44] In addition, the Exchange proposes that at least one of the two floor members on the Board will be an ETP Holder, an Equity ASAP Holder or an Allied Person of an ETP Firm or an Equity ASAP Holder. The Exchange proposes these changes in order to codify a longstanding practice that is intended to

[42] The following equity trading rules are applicable to options trading and will be incorporated into PCX Rule 4. Current Rules 5.1(a) (Member Responsibility), 5.2(b) (Orders Read for Amount) and 5.8(g) (Special Situations) are proposed to be moved to new Rule 4.23 entitled ''Miscellaneous Provisions.'' Current Rules 5.1(e)–(f) (prohibition of non-member trading) are proposed to be moved to new Rule 4.4, entitled ''Access to Trading Facilities.'' Current Rule 5.8(k) (rule on front-running of block transactions) is proposed to be renumbered Rule 4.7.

[43] *See* Exchange Act Release No. 42235 (December 14, 1999), 64 FR 71839 (December 22, 1999).

[44] *Id.*

assure a balanced representation of both floor members and non-floor members among the industry representatives.

Fourth, the Exchange proposes to remove Sections 5(a)–(b) and 6(a)–(b) of Article IV, as these provisions pertain to equity-related committees (*i.e.,* the Equity Allocation Committee and the Equity Floor Trading Committee) and are not applicable to the PCX Parent's options business.

Fifth, concurrent with the creation of PCX Equities, the Board of Governors is proposing to add Section 10 of Article VII to authorize the PCX Parent to buy, sell, or lease memberships as the Board of Governors may from time to time determine. Although the Board of Governors has no present intention of using this authority, it believes that this amendment is desirable because of the increased flexibility it will give to the Exchange.

Finally, the Exchange proposes to remove Sections 1–3 of Article XV, as these provisions pertain to the equities clearing business. Upon effectiveness of the restructuring, PCX Parent will transfer its ownership interest in Pacific Clearing Corporation to PCX Equities.

c. *Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.* The PCX approved a Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.[45] The Plan states that the PCX, the registered national securities exchange, is the parent company of the wholly-owned subsidiary, PCX Equities. The Plan also sets forth the functions and authority of the PCX and the functions and authority, which the PCX delegates to the PCX Equities.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[46] of the Act, in general, and furthers the objectives of Section 6(b)(5),[47] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–39 and should be submitted by March 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4221 Filed 2–22–00; 8:45 am]

BILLING CODE 8010–01–M

[45] *See* Attachment No. 4 to Amendment No. 1 to the proposed rule change.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[1] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3219]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Tuesday, March 14, 2000, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the Eighty-first Session of the International Maritime Organization Legal Committee (LEG 81) to be held in London from 27–31 March, 2000.

During LEG 81, the Legal Committee will complete the preparation of the draft bunkers convention for a diplomatic conference, which will be held in the 2000–2001 biennium. The Legal Committee will then continue work on a draft protocol to the Athens Convention and on the draft Wreck Removal Convention. The committee will next turn its attention to the implementation of the HNS Convention, and time will also be allotted to address any other issues on the Legal Committee's work program on which there are questions or comments.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant Daniel J. Goettle, Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: February 16, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 00–4247 Filed 2–22–00; 8:45 am]

BILLING CODE 4710–07–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Treatment on Government Procurement of Products From Counties Designated Under the Caribbean Basin Economic Recovery Act

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Renewal of treatment on Government Procurement of Products from Countries Designated under the

Caribbean Basin Economic Recovery Act.

Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of the Dominican Republic and Honduras, shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 2000. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the subsequent renewal of this treatment beyond September 30, 2000 will be based on beneficiaries' effort to improve domestic procurement practices, on their support for relevant international initiatives, such as those in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement, including support for an FTAA Agreement on Transparency as an element of business facilitation, and on their progress toward acceding to the WTO Government Procurement Agreement.

List of Countries Designated as Beneficiary Countries for Purpose of the Caribbean Basin Economic Recovery Act (CBERA): Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic; El Salvador; Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, British Virgin Islands.

Charlene Barshefsky,

United States Trade Represenrative.

[FR Doc. 00–4210 Filed 2–22–00; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold an open meeting on February 24, 2000, from 9:30 a.m. to 12:00 noon. The meeting will be open to the public from 9:30 a.m. to 12:00 noon.

DATES: The meeting is scheduled for February 24, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room B–841, located at 14th Street and Constitution Avenue, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh, Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, (202) 482–4852 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. NW, Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–13 will hold an open meeting on February 24, 2000 from 9:00 a.m. to 12:00 noon. Agenda topics to be addressed will be:

1. Bureau of Labor Statistics: Availability of Skilled Labor Asessment.
2. Labor Department Perspective regarding the Mobility of Persons Issues.
3. INS Perspective regarding the Mobility of Persons Issue.
4. State Department Perspective regarding the Mobility of Persons Issue.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–4223 Filed 2–22–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the March 1, 2000, meeting of the President's Advisory Committee on Trade Policy and Negotiations will be held from 8:00 a.m. to 12:00 noon. The meeting will be closed to the public from 8:00 a.m. to 11:30 a.m. and open to the public from 11:30 a.m. to 12:00 noon.

SUMMARY: The President's Advisory Committee on Trade Policy and Negotiations will hold a meeting on March 1, 2000 from 8:00 a.m. to 12:00 noon. The meeting will be closed to the public from 8:00 a.m. to 11:30 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 a.m. to 12:00 noon, when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for March 1, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–4222 Filed 2–22–00; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Harmonization Initiatives

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration and the Joint Aviation Authorities will convene meetings to accept input from the public on the Harmonization Work Program. The Harmonization Work Program is the means by which the Federal Aviation Administration and the Joint Aviation Authorities carry out a commitment to harmonize, to the maximum extent possible, the rules regarding the operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of this meeting is to provide an opportunity for the public to submit input to the Harmonization Work

Program. This notice announces the date, time, location, and procedures for the public meetings.

DATES: The public meetings will be held on March 7 and 9, 2000, starting at 10:30 a.m. each day. Written comments are invited and must be received on or before February 29, 2000.

ADDRESSES: The public meeting will be held JAA Headquarters, Saturnusstraat 8–10, 2132 HB Hoofddorp. Persons unable to attend the meeting may mail their comments in triplicate to: Brenda Courtney, Federal Aviation Administration, Office of Rulemaking, ARM–200, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to attend and present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Brenda Courtney, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3327, telefax (202) 267–5075.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration and the Joint Aviation Authorities will convene meetings to accept input from the public on the Harmonization Work Program. The meetings will be held on March 7 and 9, 2000, at JAA Headquarters, Saturnusstraat 8–10, 2132 HB Hoofddorp.The meetings are scheduled to begin at 10:30 a.m. each day. The agenda for the meetings will include:

March 7, 2000
- Review of Action Items from October 1999 HMT Meeting
- Review of Action Items from the FAA/JAA 16th Annual Conference
- General Session—Industry Issues and Concerns

March 9, 2000
- General Session—Response to Industry Issues and Concerns

Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charges to attend or to participate in the meeting. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be morning and afternoon breaks and lunch breaks.

(3) The meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(5) The FAA and JAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, speakers may be excluded if necessary to present a balance of viewpoints and issues.

(6) Representatives of the FAA and JAA will preside over the meetings.

(7) The FAA and JAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA presiding officers. Persons participating in the meetings should provide five (5) copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participants.

(8) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA or JAA.

(9) The meetings are designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on February 16, 2000.

Brenda D. Courtney,

Manager, Aircraft and Airport Rules Division.

[FR Doc. 00–4228 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–99–4317]

Transportation Equity Act for the 21st Century; Final Guidance for the Congestion Mitigation and Air Quality Improvement Program

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; issuance of final guidance.

SUMMARY: This document publishes final guidance on section 1110 of the Transportation Equity Act for the 21st Century (TEA–21) for the congestion mitigation and air quality improvement program (CMAQ). This final guidance replaces all earlier CMAQ guidance documents and provides information on: (1) CMAQ authorization levels and apportionment factors; (2) the new flexibility and transferability provisions; (3) geographic area eligibility for CMAQ funds and the impacts of new National Ambient Air Quality Standards on eligibility; (4) project eligibility; (5) analytical requirements; and (6) Federal, State, and local agency roles and responsibilities in the administration of the program.

DATES: This final guidance is effective on April 28, 1999.

FOR FURTHER INFORMATION CONTACT: For the FHWA program office: Mr. Michael J. Savonis, HEPN–10, Office of Environment and Planning, (202) 366–2080; For the FTA program office: Mr. Abbe Marner, TPL–12, Office of Planning, (202) 366–4317; For legal issues (FHWA): Mr. S. Reid Alsop, HCC–30, Office of the Chief Counsel, (202) 366–1371. For legal issues (FTA): Mr. Scott Biehl, TCC–30, Assistant Chief Counsel, Environment and Regional Operations Division, (202) 366–0952. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* Internet users may also access the written comments on the interim guidance [FHWA Docket No. FHWA–98–4317] received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

Background

On October 26, 1998, at 63 FR 57154, the FHWA and the FTA published interim implementation guidance for

the CMAQ program provided in section 1110 of the TEA–21, Public Law 105–178, 112 Stat. 107, at 142 (1998). The text of the final guidance, which has been in effect since April 28, 1999, is provided as an attachment to this notice.

In the latter part of 1998, the FHWA and the FTA hosted five forums in four cities (Washington, D.C., San Francisco, CA, Chicago, IL, and St. Louis, MO) to provide an opportunity for those directly involved in congestion mitigation and air quality improvement programs to assist in developing the final guidance.

The CMAQ program, established under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, was designed to assist nonattainment and maintenance areas in attaining the national ambient air quality standards (NAAQS) by funding transportation projects and programs that will improve air quality. It was reauthorized with some changes under section 1110 of the TEA–21.

The primary purpose of the CMAQ program remains the same: to fund projects and programs in air quality nonattainment and maintenance areas that reduce transportation-related emissions. It is the only program under title 23, U.S.C., with funds dedicated to helping nonattainment and maintenance areas to achieve and maintain the NAAQS.

Discussion of Comments

Interested persons were invited to comment on the interim guidance for the CMAQ program under the TEA–21. We received 34 comments from 32 agencies in response to an invitation to submit written comments to the docket number FHWA–1998–4317 by November 30, 1998. Of the 32 commenters, 14 were State agencies, 7 were local agencies, 7 were private sector companies or industry associations, 2 were public interest institutes, 1 was a Federal agency, and 1 was a private citizen. The **Federal Register** notice specifically asked for general comments, as well as for input on eight questions and issues related to the new flexibilities in the CMAQ program (For brevity, the original questions are abridged in this summary). The FHWA and the FTA also conducted extensive outreach efforts by holding five stakeholder forums in which over 200 participants provided input.

In general, the comments were supportive of the CMAQ program, acknowledging its important role in helping States and metropolitan areas reach air quality goals. Given the several years of experience with CMAQ and public involvement processes under ISTEA, as well as the continued need to provide flexibility to States and metropolitan planning organizations (MPOs), most commenters, particularly those at the stakeholder forums, urged that CMAQ implementation guidance be flexible—not prescriptive—and allow for existing processes to work or be enhanced appropriately.

Many of the written comments to the docket on the interim guidance addressed two issues: (1) Eligibility of CMAQ funding in areas where the 1-hour ozone standard has been revoked; and (2) project evaluation and project selection criteria.

Many of the State agencies commenting to the docket opposed eliminating the eligibility of CMAQ funding for the areas where the 1-hour ozone standard has been revoked. The law makes clear, however, that only those areas that are classified in accordance with sections 181(a) and 186(a) or (b) of the Clean Air Act (42 U.S.C. 7511 and 7512) can be included in the statutory formula apportioning CMAQ funds. Further, the law requires that CMAQ funds be expended to assist nonattainment and maintenance areas, if any exist within the State, to attain and maintain the standards. Since nonattainment areas that have the 1-hour standard revoked have no ozone standard to meet and, as a result, have no maintenance plans and continuing air quality responsibilities, the CMAQ funds could not be expended to assist attainment or maintenance of the 1-hour standard in those areas. Finally, reinstatement of the 1-hour ozone standard, as proposed by the U.S. Environmental Protection Agency (EPA), would render this issue moot.

In the final guidance, the FHWA and the FTA have attempted to provide as much flexibility to State and local agencies in using CMAQ funding within the existing authority provided by the TEA–21. As reflected in the final guidance, in order to provide continuity in the transportation and air quality planning process, the FHWA and the FTA will allow those areas where the 1-hour ozone standard has been revoked to use CMAQ funds for air quality improvement projects that were included in the first three years of the transportation improvement program (TIP) in effect when the standard was revoked. In addition, these areas were granted a four-month period (beginning with the April 28, 1999 guidance or the effective date of revocation, whichever is later) to make any adjustments to those TIPs.

Nearly all of the written comments emphasized the need for project evaluation and selection criteria that could quantify air quality benefits more accurately and encourage the selection of the most cost-effective projects. Many commenters also felt that such evaluation protocols would help ensure that public-private partnerships serve the public interest. The FHWA and the FTA recognize the importance of ensuring that CMAQ funds continue to provide an important resource for reducing air pollution from mobile sources, and, in particular, to assist attainment of the national ambient air quality standards. The law, however, does not require performance standards. In addition, the CMAQ program funds a great variety of projects, each with unique circumstances and potential impacts (including air quality improvement, congestion relief, quality of life enhancements, and other public benefits), that preclude the application of a standardized and inflexible evaluation protocol. The FHWA and the FTA have encouraged States to prudently use their CMAQ funds for those projects that have strong emissions and other public benefits. The FHWA and the FTA believe that information on evaluation and project selection criteria and effective practices is best provided in follow-up technical assistance rather than prescribed in the final guidance document.

Question 1. Public-Private Partnerships

(a) Are there ways to ensure that the public funding (CMAQ) is limited to the production of a public benefit—air quality improvement?

Thirty commenters responded to the four questions concerning public-private partnerships. Collectively, the comments identified several methods to ensure that CMAQ funding used in public-private partnerships serve the public interest. For the most part, commenters cited the need for performance measures (such as cost-effectiveness criteria) and a standard methodology for measuring and reporting air quality improvement and public benefits. Some commenters suggested that programs administered by the U.S. Department of Energy, the California Air Resources Board, and the Connecticut Department of Transportation could serve as models on how to administer public-private partnerships.

Like the great majority of commenters, the FHWA and the FTA strongly believe that public-private partnerships provide a significant opportunity to advance a greater number of clean air transportation initiatives than could be

achieved with public funds alone. The final guidance addresses public-private partnerships as an eligible activity. The TEA–21 requires that a written agreement be in place between the public agency and private or non-profit entity before implementing a CMAQ-funded project. Since the public benefit is air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. In this respect, public-private partnerships are no different from public sector CMAQ projects. In addition, the FHWA is currently researching effective models and practices for public-private partnerships that will be shared in future technical assistance.

(b) How can the Federal, State, and local agencies insure that an open process for project selection is preserved?

For the most part, all of the commenters agreed that an open process was important and essential. Many commenters identified possible elements of an open process, which included the following: (1) Asking MPOs to provide public notice of the availability of funding for CMAQ programs; (2) providing opportunities for prospective participants to meet with transportation planning officials to discuss the merits of their projects; and (3) having Federal, State, and local agencies identify the various steps the private sector must take to participate in public-private partnership programs. The FHWA and the FTA agree with the majority of commenters that it is essential that all interested parties have full and timely access to the process of selecting projects for CMAQ funding. Given the great interest from commenters and the diversity of ideas, the FHWA and the FTA expect to provide additional information on effective practices and procedures on cost-effectiveness and project selection in future technical assistance.

(c) What safeguards, agreements, or other mechanisms should be employed to protect the public investment and insure that joint public-private projects funded under the CMAQ program are used for their intended public purpose, which is to improve air quality?

In general, commenters believed that existing processes protect the public interest and offer adequate safeguards to public agencies. Three commenters cited U.S. Department of Energy and California Air Resources Board programs as possible models for effective administration of public-private partnerships. Collectively, the commenters identified several mechanisms to safeguard the public interest in public-private partnerships that receive CMAQ funds as follows: (1) Establish a regular monitoring program that measures air quality improvements and other public benefits; (2) retain an appropriate percentage of the CMAQ funding until the State is satisfied that a project is meeting its intended purpose; (3) require MPOs to certify that the project will improve air quality using appropriate evaluation procedures; and (4) appoint a project manager from another agency as an administrator. The FHWA and the FTA will consider these comments in future technical assistance concerning public-private partnerships related to CMAQ-funded projects. As reflected in the final guidance, the States are responsible for ensuring that the intent of CMAQ funded projects is served.

(d) What are the implications of these new flexibilities on the transportation/air quality planning process? For transportation conformity?

Several State agencies emphasized that documentation of estimated emission reduction is the key for conformity analysis, regardless of project sponsor, while an open planning process and emphasis on carrying out the State Implementation Plan (SIP) will assist conformity. However, one State agency felt the new public-private partnership provisions would have a minimal impact on the transportation and air quality planning and conformity process. Based on these comments and input from other stakeholders at public forums, the FHWA and the FTA expect that, through the continued vigilance and responsibilities of the States, public-private partnerships will not negatively impact the ability of areas to achieve air quality and conformity goals. The final guidance also stresses the use of CMAQ funds for projects that have strong emissions benefits.

Question 2. Telecommuting

Currently, eligibility for expenses related to telecommuting programs is limited to planning, technical and feasibility studies, training, coordination and promotion. Purchase of computer and office equipment for public agencies and related activities are not eligible. Should CMAQ eligibility be expanded to include these costs?

Of the 14 responses to this question, 6 commenters felt that telecommuting eligibility should not be extended to the purchase of computer and office equipment. These commenters either believed that funding for these items could come from other sources, or that telecommuting projects had a minimal impact on air quality improvements. One commenter expressed concerns that telecommuting programs may actually exacerbate sprawl by encouraging employees to live farther from their workplaces. Another 8 commenters believed that telecommuting programs should be able to purchase equipment with CMAQ funds with some caveats as follows: (1) Purchase of computer and office equipment should be eligible as a one-time expenditure; (2) equipment purchases for home use or for only one employee should not be eligible; (3) equipment must remain for use by the telecommuting program; and (4) the telecommuting program must be large enough to have an actual, quantifiable impact upon air conformity. One commenter suggested that agencies should fund pilot projects to develop empirical data on the benefits of telecommuting programs. Based on the conflicting comments received, the FHWA and the FTA felt there was no compelling reason to change the existing eligibility policy on telecommuting.

Question 3. Alternative Fuel Vehicles (AFV)

Under the interim guidance and under TEA–21, CMAQ eligibility under the public-private partnership provisions is limited to the incremental cost of a new alternative fuel vehicle as compared to a conventionally fueled vehicle of the same type. Should this policy be extended to projects that will provide for the use of alternative fuels for publicly-owned vehicles and vehicle fleets (other than vehicles used for public transit services)?

There were 20 responses to this question. Three commenters felt that the policy should be extended to projects that encourage the use of alternative fuels for publicly-owned vehicles and vehicle fleets. Another 8 commenters stated that the policy should not be extended to such publicly-owned projects. Many of these commenters believed that the FHWA and the FTA should maintain as much flexibility as possible so that areas can realize the potential air quality improvements offered by AFVs, particularly those that exceed EPA standards. Of the other 9 responses, 8 commenters expressed general support for the eligibility of alternative fuel vehicle projects for CMAQ funds, while 1 commenter stated that the FHWA and FTA should not intervene in the AFV market.

Based on the positive response from the majority of commenters to the **Federal Register** notice and in public forums, the final guidance maintains current eligibility for the full cost of publicly-owned, alternative fuel

vehicles, for on-site fueling facilities, and for other infrastructure needed to fuel alternative fuel vehicles. However, if privately-owned fueling stations are in place and are reasonably accessible and convenient, then CMAQ funds may not be used to construct or operate publicly-owned fueling stations as before. The FHWA and the FTA emphasize that there must continue to be a sound and open process, which safeguards the public interest, and which does not favor one private sector interest over another. In particular, States continue to be responsible for ensuring that the public interest is protected.

Question 4. Traffic Calming Measures

Should traffic calming projects be categorically excluded from CMAQ funding or should they be considered for eligibility on a case-by-case basis?

Of the 13 commenters, 9 agencies felt that traffic calming projects should be considered for CMAQ funding on a case-by-case basis by carefully evaluating possible increases in hydrocarbon and carbon monoxide (CO) emissions at lower speeds against potential long-term reductions in automobile travel by single occupancy vehicles. One of these agencies also stipulates that traffic calming projects should be part of a broader area systems plan in order to receive CMAQ funds.

Two agencies believed that traffic calming projects should not be eligible, while another two believed that the FHWA and the FTA should sponsor further research investigating the long-term potential of mode switching and traffic diversion resulting from traffic calming projects. Based on the comments received, the FHWA and the FTA will continue to consider traffic calming measures for CMAQ funding on a case-by-case basis.

Question 5. Experimental Pilot Projects

What can the FHWA and the FTA do to encourage the implementation of experimental projects under this provision?

Twelve agencies responded to this question, offering several ideas to the FHWA and the FTA on possible actions to encourage experimental pilot projects as follows: (1) Provide direction and examples as to how areas could best determine priority ranking of experimental CMAQ projects compared to other proposed projects that have quantified emissions benefits; (2) develop a working group or pursue research regarding the development of unique CMAQ pilot projects; (3) consider a process by which a pilot project that demonstrates quantifiable air quality benefits can be incorporated into ''regular'' CMAQ programs; (4) create an objective rating system for candidate projects that establishes a bonus for innovative projects that don't have significant access to other TEA–21 funding; and (5) direct States to set aside a minimum percentage of CMAQ appropriations for experimental projects, the allocation of which would be determined jointly by the individual States' air quality, energy, and transportation agencies. Given the diversity of comments received, the FHWA and the FTA will consider the wide-ranging suggestions in future research and program activities.

Question 6. Fare/Fee Subsidy Program

The current CMAQ Guidance allows for partial, short-term subsidies of transit and paratransit fares as a means of encouraging transit use. Transit agencies have used this provision to offer reduced fares on ''ozone alert'' days. Should this provision be changed to allow ''free fares?'' Should the provision be loosened to allow a broader period of coverage, i.e., throughout the high-ozone season rather than individual episodes?

Of the 13 agencies responding to this question, 10 believed that the provisions should allow free fares and a broader period of coverage. These ten agencies believed that such an expansion would provide greater local flexibility in planning, and enable more routine use of transit. In particular, these agencies believed that allowing a broader period of coverage would enable better planning, and eliminate the difficulty of predicting ''high ozone'' days far enough in advance to have an impact on travel choice. Two agencies believed that the FHWA and the FTA should assess subsidy programs for cost-effectiveness before expanding program eligibility. In addition, one State agency opposed relaxing the provisions, stating that free fares and broader coverage would only enable existing transit users to make more substantial use of the transit system rather than attract new transit users.

The final guidance allows for the use of CMAQ funds to subsidize a transit fare if the reduced or free fare is part of a more comprehensive program in the nonattainment or maintenance area to prevent exceedances of a national air quality standard. In the final guidance, the FHWA and the FTA focus on the potential to attract new riders to transit so that transit can contribute to an action plan to meet air quality objectives.

Question 7. High Occupancy Toll (HOT) Lanes

Should projects to fund the development and/or operation of HOT lanes be eligible under the CMAQ program?

Of the 11 commenters on this question, 5 believed that HOT lanes should be eligible. Many of these commenters believed that the revenues from these projects should be reinvested for air quality improvements. A public interest group for highway and safety qualified their affirmative response by stating that medium or heavy trucks should be excluded from participating in a congestion pricing program on HOT lanes receiving CMAQ funds. Two agencies commented that HOT lanes should not be eligible since they have mixed air quality improvement results and could be self-funding. Another four agencies believed that HOT lanes must demonstrate air quality benefits before becoming eligible. There is no clear consensus among the commenters. Further concerns exist regarding the FHWA's and the FTA's discretion to allow CMAQ funding for HOT lanes and no commenters suggested an alternative interpretation of the law that might preclude these concerns. In the final guidance, the FHWA and the FTA state that projects to plan, develop, assess, or construct new High Occupancy Toll lanes are an eligible CMAQ expense only if they are part of the Value Pricing Program under TEA–21 (which provides relief under the law from some statutory provisions like those in 23 U.S.C. 149.)

Question 8. Reporting Requirements

Do you have any suggestions on how to improve upon the quality of data and information provided in annual reports? Would you use an electronic reporting format if that option were available to you? Do you have any suggestions on how to improve the reporting requirements and minimize the administrative burden of reporting on CMAQ-funded projects?

Of the 10 agencies responding to these questions, all welcomed electronic reporting, particularly a system that could take advantage of internet technologies. These commenters believed that electronic reporting would facilitate communication, help streamline the reporting process, and reduce the administrative burden. Based on the positive comments and endorsement received, the FHWA is developing a web-based electronic reporting system that can be used by Federal, State, and MPO agencies, and also make information about CMAQ projects more accessible to the public.

Authority: 23 U.S.C. 315; sec. 1110, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48 and 1.51.

Issued on: February 14, 2000.

Nuria Fernandez,

Acting Federal Transit Administrator.

Kenneth R. Wykle,

Federal Highway Administrator.

The text of the final implementation guidance on the CMAQ program reads as follows:

The Congestion Mitigation and Air Quality Improvement (CMAQ) Program: Program Guidance

I. Introduction

The CMAQ program was reauthorized in the recently enacted TEA–21 (Public Law 105–178, June 9, 1998). The primary purpose of the CMAQ program remains the same: to fund transportation projects and programs in nonattainment and maintenance areas which reduce transportation-related emissions. Over $8.1 billion dollars is authorized over the 6-year program (1998–2003), with annual authorization amounts increasing each year during this period.

This guidance provides complete information on the CMAQ program including:

1. Authorization levels and apportionment factors under TEA–21;
2. Flexibility and transferability provisions available to States;
3. Geographic area eligibility for CMAQ funds;
4. Project eligibility information;
5. Project selection processes; and 6. Program oversight and reporting responsibilities.

This guidance replaces all earlier CMAQ guidance documents. Information on the current annual apportionment to each State and copies of this guidance are available from the FHWA Web Site at: *www.fhwa.dot.gov*.

II. Program Purpose

The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO). The TEA–21 also allows CMAQ funding to be expended in particulate matter (PM) nonattainment and maintenance areas.

Congress did not intend CMAQ funding to be the only source of funds to reduce congestion and improve air quality. Other funds under the Surface Transportation Program (STP) or the Federal Transit Administration (FTA) capital assistance programs, for example, may be used for this purpose as well. Furthermore, the greatest air quality benefit will accrue not solely from Federal funds, but from a partnership of Federal, State and local efforts.

III. Priority for Use of CMAQ Funds

Section 176(c) of the Clean Air Act (CAA, 42 U.S.C. 7506, July 14, 1955, c. 360, Title I, Section 176(c)(2)(B) as amended Nov. 15, 1990) requires that the Federal Highway Administration (FHWA) and the FTA ensure timely implementation of transportation control measures (TCMs) in applicable State Implementation Plans (SIPs), and consequently, the highest priority for funding under the CMAQ program is for the implementation of such measures. The SIPs and the control measures they contain are necessary to assist a State to attain and maintain the NAAQS. A basic criterion for making conformity determinations is the timely implementation of TCMs in the SIP, and conformity determinations are necessary before transportation plans, programs, or projects can be adopted and approved. If States fail to ensure timely implementation of TCMs included in SIPs, their conformity determinations and transportation initiatives will be in jeopardy. In addition, failing to implement TCMs in SIPs can also trigger the application by the Environmental Protection Agency (EPA) of the CAA highway sanctions (42 U.S.C. § 7509, July 14, 1955, c. 360, Title I, Section 179(b)(1), as amended Nov. 15, 1990).

Once CMAQ projects and programs are identified, States need to insure that sufficient obligation authority is reserved to implement these projects and programs so that nonattainment areas make progress toward attainment of the NAAQS and that maintenance areas do not backslide into nonattainment. While the continuation of CMAQ funds into the maintenance period now makes it possible to look at longer term strategies, States and metropolitan planning organizations (MPOs) are still encouraged to consider and give priority to strategies that would help them meet their attainment deadlines and maintain the NAAQS into the future.

States and MPOs should make strategic use of the CMAQ funds allotted to them even if they will not be used for TCMs in their SIPs. For example, CMAQ funding should also be considered for use in implementing other CMAQ eligible transportation projects in SIPs such as inspection and maintenance (I/M) programs. These and other transportation projects may be essential to attainment of the NAAQS and therefore States and MPOs are urged to consider their funding, where eligible, under the CMAQ program.

The FHWA and FTA continue to recommend that States and MPOs develop their transportation/air quality programs using complementary measures that simultaneously provide alternatives to single-occupant vehicle (SOV) travel while reducing demand through pricing, parking management, regulatory or other means. Further, the FHWA and FTA urge States and MPOs to develop a full and open public process for the solicitation and selection of meritorious projects to be funded through the CMAQ program.

IV. Authorization Levels Under TEA–21

Authorization Levels

Table 1 shows the TEA–21 CMAQ authorization levels by fiscal year. The CMAQ funds will be apportioned to States each year based upon the adopted apportionment factors as shown in Table 2.

TABLE 1.—TEA–21 CMAQ AUTHORIZATION LEVELS

Fiscal year authorization	Amount authorized
FY1998	$1,192,619,000
FY1999	1,345,415,000
FY2000	1,358,138,000
FY2001	1,384,930,000
FY2002	1,407,474,000
FY2003	1,433,996,000

Minimum Guarantee

The TEA–21 includes a minimum guarantee that provides each State funding in an amount not less than 90.5 percent of the estimated annual Federal gasoline tax payments each State pays into the Highway Trust Fund (HTF). Due to the Minimum Guarantee, the annual authorizations listed in Table 1 are the minimum authorization levels and are likely to be increased depending on actual HTF receipts.

Transferability of CMAQ Funds

States may transfer CMAQ funds to other programs according to the following provision (23 U.S.C. 110(c)). An amount not to exceed 50 percent of the State's annual apportionment may be transferred *less* the amount the State would have received if the CMAQ program was authorized at $1,350,000,000 for that year. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. This increment of transferable funds will differ from year-to-year and State-to-State depending on overall authorization levels. Each year FHWA will inform each State how

much of their CMAQ funding is transferable, if any, and will track the transfer of CMAQ funds each year.

V. Annual Apportionments of CMAQ Funds to States

Apportionment Factors

The CMAQ funds are apportioned annually according to factors (23 U.S.C. § 104(a)), largely based on air quality need, which are calculated in the following manner. The population of each area in a State (based upon Census bureau data by county), that at the time of apportionment is a nonattainment or maintenance area for ozone and/or CO and meets the classifications contained in the CAA, is multiplied by the appropriate factor listed in Table 2. Two key changes are included in the apportionment factors under TEA–21. Areas that are designated and classified as submarginal and maintenance areas for ozone are now explicitly included in the apportionment formula, and there are new weighting factors for CO nonattainment areas.

TABLE 2.—TEA–21 CMAQ APPORTIONMENT FACTORS

Pollutant	Classification at the Time of annual Apportionment	Weighting factor
Ozone (O_3) or (CO)	Maintenance (these areas had to be previously eligible as nonattainment areas-See Section VI).	.8
Ozone	Submarginal	.8
	Marginal	1.0
	Moderate	1.1
	Serious	1.2
	Severe	1.3
	Extreme	1.4
CO	Nonattainment (for CO only)	1.0
Ozone and CO	Ozone nonattainment or maintenance and CO maintenance	1.1×O_3 factor
	Ozone nonattainment or maintenance and CO nonattainment.	1.2×O_3 factor
All States—minimum apportionment	½ of 1 percent total annual apportionment of CMAQ funds	N/A

Minimum Apportionments

Each State is guaranteed at least ½ of 1 percent of each year's CMAQ authorized funding regardless of whether the State has any nonattainment or maintenance areas.

Use of Minimum Apportionments in States Without Nonattainment or Maintenance Areas

If a State does not have, and has never had, a nonattainment or maintenance area, the State may use its minimum apportionment for any projects in the State eligible under either the CMAQ or the STP. Such States are encouraged to give priority to the use of CMAQ program funds for projects that will relieve congestion or improve air quality in areas that are at risk of being designated as nonattainment.

Use of Minimum Apportionments in States With Nonattainment or Maintenance Areas

Some of the States receiving minimum apportionments have nonattainment or maintenance areas. In States where the amount of CMAQ funds generated due to nonattainment or maintenance areas is less than the minimum apportionment levels, additional flexibility is granted under TEA–21. A State receiving the minimum apportionment must use that portion of funds related to nonattainment and maintenance status (the ''air quality'' portion), in those nonattainment or maintenance areas. The State may use the funds added above the formula amount to make up the minimum apportionment (the ''flexible portion'') for any CMAQ or STP eligible project in the State.

When the total annual CMAQ authorization exceeds $1.35 billion, States may also use the transferability provisions as described in Section IV. After the apportionment process each year, the FHWA will advise the minimum apportionment States with nonattainment or maintenance areas of the amount that can be flexed and the amount that can be transferred, if any.

Apportionments and State Suballocation

Despite the statutory formula for determining the apportionment amount, the State can use its CMAQ funds in any ozone, CO or PM–10 nonattainment or maintenance area. A State is under no statutory obligation to suballocate CMAQ funds in the same way as they were apportioned. However, States are strongly encouraged to consult with affected MPOs to determine CMAQ priorities and allocate funds accordingly. Further, to facilitate planning and programming of funds, it is critical that States provide MPOs with timely and reasonable estimates of the amount of CMAQ funding they can expect each year.

Federal Share and State/Local Match Requirements

The Federal share for most eligible activities and projects is 80 percent or 90 percent if used on the interstate system. Under certain conditions (including sliding scale rates), the Federal share under title 23 of the United States Code can even be higher. Certain activities identified in section 120(c) of title 23, including traffic control signalization, commuter carpooling and vanpooling, and signalization projects to provide priority for transit vehicles may be funded at 100 percent Federal share if they meet the conditions of that section.

Those responsible for CMAQ project decisions have discretion with respect to the level of local match, if any, beyond the minimum Federal requirements. For example, decisionmakers may decide that a particular project requires a 50 percent local match contribution rather than the usual 20 percent required under Federal law.

VI. Geographic Areas that are Eligible to Use CMAQ Funds

Impact of the Revised NAAQS

The CMAQ eligibility provisions under TEA–21 (23 U.S.C. 149(b)) allow that any area designated as nonattainment after December 31, 1997, be eligible to spend CMAQ funding even though the area may not be classified according to the classifications identified in the Clean Air Act Amendments of 1990 (Sections 181(a), and 186(a)). Such areas, however, will not be included in the apportionment factors since they will

not be given classifications. This provision ensures that any areas designated nonattainment as a result of the revised ozone and PM air quality standards, promulgated in 1997, will be eligible to receive CMAQ funding. Areas which are designated as nonattainment after December 31, 1997, and are subsequently redesignated to maintenance areas are also eligible to receive CMAQ funds.

The EPA's policies regarding the revocation of the PM–10 standard are still under development. Issues affecting the distribution of CMAQ funds and eligibility for affected areas will be addressed after EPA determines its policies with respect to revocation of the PM–10 standard.

Revocation of the 1-Hour Ozone Standard

As part of the transition to the 8-hour ozone standard, EPA is revoking the 1-hour standard in areas that demonstrate the requisite 3 years of ''clean'' monitoring data. Among areas where the 1-hour standard is revoked, those areas that have *EPA-approved* maintenance plans on the effective date of revocation will continue to have their maintenance plans in full force. As maintenance areas, they will continue to be eligible for CMAQ funds and will be included in the annual apportionment factors. The conformity requirements will also continue to apply in these areas.

Other areas for which the 1-hour ozone standard is revoked may not have EPA-approved maintenance plans. These areas are no longer designated nonattainment or maintenance relative to the 1-hour standard. As such, these areas will not be subject to the conformity requirements, and they will no longer be able to meet the basic statutory requirement for CMAQ eligibility unless they are designated nonattainment or maintenance for CO and/or PM. In order to provide continuity in the transportation/air quality planning process, FHWA/FTA will allow these areas to use CMAQ funds for air quality improvement projects that were included in the first 3 years of the transportation improvement program (TIP). In addition, these areas will be granted a 4-month period beginning with the date of release of this guidance or the effective date of revocation, whichever is later, to make any adjustments to their TIPs.

Classification Criteria

An area that was designated as a nonattainment area for ozone, CO or PM–10 under the CAA prior to December 31, 1997, is eligible for CMAQ funds provided that the area is also classified in accordance with Sections 181(a), 186(a), or 188(a) or (b) of the CAA. This means that ozone nonattainment areas must be designated and classified ''marginal'' through ''extreme,'' and CO and PM–10 nonattainment areas must be designated and classified either ''moderate'' or ''serious'' to be eligible for CMAQ funding. Submarginal ozone nonattainment areas are now included in the CMAQ apportionment formula and are eligible to receive CMAQ funds. Areas that were previously designated nonattainment and classified in accordance with this section, but are subsequently redesignated to maintenance areas are also eligible to receive CMAQ funds.

Areas which were designated nonattainment prior to December 31, 1997, but were not classified in accordance with the above are *not* eligible to receive CMAQ funds. These include but are not limited to areas that were formerly considered as ozone ''transitional'' and ''incomplete data'' areas and CO ''not classified'' areas.

Maintenance Areas

Maintenance areas that were designated nonattainment, but have since met the air quality standards are now explicitly eligible to receive CMAQ funding and are included in the apportionment factors. Such areas must have met the classification requirements of the 1990 CAA if they were designated nonattainment prior to December 31, 1997, (as discussed in Section V above) in order to be eligible and included in the apportionment factors.

In States which have ozone or CO maintenance areas and no nonattainment areas, CMAQ funds must be used in the maintenance areas. Previous guidance allowed such States flexibility to use their CMAQ funding for projects eligible under the STP if a State could demonstrate that it had sufficient funding to meet its air quality commitments within its maintenance areas. Such flexibility is no longer allowed since maintenance areas are now included in the apportionment formula and the eligibility provisions require that CMAQ funding be used in nonattainment and maintenance areas.

PM–10 Nonattainment and Maintenance Areas

Nonattainment and maintenance areas for PM–10 are also now explicitly eligible to receive CMAQ funding. States that have PM–10 nonattainment or maintenance areas only (i.e., no ozone or CO nonattainment or maintenance areas) are granted additional flexibility under TEA–21. Since these areas are not included in the CMAQ apportionment calculation, the State may use its minimum apportionment for projects eligible under the STP or the CMAQ program anywhere in the State. However, such States are encouraged to use their CMAQ funds in the PM–10 nonattainment and maintenance areas. Examples of eligible projects and programs in a PM–10 nonattainment or maintenance area include paving dirt roads, diesel bus replacements, and purchase of more effective street-sweeping equipment.

VII. Project Eligibility Provisions

Projects Not Eligible for CMAQ Funding

As was the case under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, Dec. 18, 1991, 105 Stat. 1914), certain projects may not be funded under the CMAQ program under any circumstances. Activities which are legislatively prohibited, including scrappage programs and highway capacity expansion projects, may not be funded under the CMAQ program. Similarly, rehabilitation and maintenance activities, as noted below, show no potential to make further progress in achieving the air quality standards and may not be funded under the CMAQ program. Program funds may also not be used for projects which are outside of nonattainment or maintenance area boundaries except in cases where the project is located in close proximity to the nonattainment or maintenance area and the benefits will be realized primarily within the nonattainment or maintenance area boundaries. (Note: The use of CMAQ funds under the flexibility provisions discussed in Section V are an exception). Public-private partnerships involving the implementation of statutorily mandated measures (*e.g.*, phase-in of alternatively fueled fleets) may not be funded with CMAQ funds. Finally, projects not meeting the specific eligibility requirements under titles 23 or 49 of the United States Code may also not be funded under this provision.

Highway and Transit Maintenance and Reconstruction Projects:

Routine maintenance projects are not eligible for CMAQ funding. Routine maintenance and rehabilitation on existing facilities maintains the existing levels of highway and transit service, and therefore maintains existing ambient air quality levels. Thus, no progress is made toward achieving the NAAQS. Rehabilitation projects only serve to bring existing facilities back to

acceptable levels of service. Other funding sources, like the STP and FTA's Section 5307 program, exist for reconstruction, rehabilitation and maintenance activities. Replacement-in-kind of track or other equipment, reconstruction of bridges, stations and other facilities, and repaving or repairing roads are also ineligible for CMAQ funding.

Construction of SOV Capacity:

Construction projects which will add new capacity for SOV are not eligible under this program unless the project consists of a high-occupant vehicle (HOV) facility that is available to SOV only at off-peak travel times. For purposes of this program, construction of added capacity for SOV means the addition of general purpose through lanes to an existing facility which are not HOV lanes, or construction of a highway at a new location. However, projects to plan, develop, assess, or construct new High Occupancy Toll lanes are an eligible CMAQ expense so long as they are part of the Value Pricing Program under TEA–21 (23 U.S.C. 149(a)).

Project Eligibility-General Conditions

All projects and programs eligible for CMAQ funds must come from a conforming transportation plan and TIP, and be consistent with the conformity provisions contained in section 176(C) of the CAA and the Transportation Conformity Rule Projects (40 CFR Parts 51 and 93, as amended) need to be included in TIPs or state-wide transportation improvement projects developed by MPOs or States respectively, under the metropolitan or statewide planning regulations (23 CFR 450, 49 CFR Part 613). Projects also need to complete the National Environmental Policy Act (NEPA) requirements and meet basic eligibility requirements for funding under titles 23 and 49 of the United States Code.

In cases where specific guidance is not provided, the following should guide CMAQ eligibility decisions.

Capital Investment:

CMAQ funds should be used for establishment of new or expanded transportation projects and programs to help reduce emissions. In many cases this is likely to be capital investment in transportation infrastructure or establishment of a new demand management strategy or other program.

Operating Assistance: There are several general conditions which must be met in order for any type of operating assistance to be eligible under the CMAQ program.

- In extending the use of CMAQ funds to operating assistance, the intent is to help start up viable new transportation services which can demonstrate air quality benefits and eventually will be able to cover their costs to the maximum extent possible. Other established funding sources should supplement and ultimately supplant the use of CMAQ funds for operating assistance.
- Operating assistance includes all costs related to ongoing provision of new transportation services including, but not limited to, labor, administrative costs and maintenance.
- When using CMAQ funds for operating assistance, local share requirements still apply.
- Operating assistance is limited to new transit services and new or expanded transportation demand management strategies.
- Operating assistance under the CMAQ program is limited to 3 years, except as noted elsewhere in this guidance.

Emission Reductions: Projects funded under the CMAQ program must be expected to result in tangible reductions in CO, ozone precursor emissions, or PM–10 pollution. This can be demonstrated by the assessment of anticipated emission reductions that is required under this guidance for most projects. The FHWA and FTA strongly encourage State and local governments to use CMAQ funds for their primary purpose which is to assist nonattainment and maintenance areas to reduce transportation-related emissions.

Public Good: CMAQ funded projects should be for the good of the general public. Public-private partnerships may be eligible, however, so long as a public good (i.e., reduced emissions) results from the project (see discussion of public-private partnerships below).

Eligible Activities and Projects

Eligibility information on activities and projects and program areas is provided below, together with any restrictions. All possible requests for CMAQ funding are not covered; this section provides particular cases where guidance can be given and rules of thumb applied to assist decisions regarding CMAQ eligibility.

1. *Transportation Activities in an Approved SIP or Maintenance Plan:*

Transportation activities in approved SIPs and maintenance plans are likely to be eligible activities and, if so, must be given the highest priority for CMAQ funding. Their air quality benefits will generally have already been documented. If not, such documentation is necessary before CMAQ funding can be approved. Further, the transportation improvement must contribute to the specific emission reductions necessary to bring the area into attainment.

2. *TCMs:*

The TCMs included in 42 U.S.C. 7408(f)(1) are the kinds of projects intended by the TEA–21 for CMAQ funding, and generally satisfy the eligibility criteria. As above, and consistent with the statute, air quality benefits for TCMs must be determined and documented before a project can be considered eligible. One CAA TCM, xvi—programs to encourage removal of pre-1980 vehicles is specifically excluded from the CMAQ program by the TEA–21 legislation. Eligible TCMs are listed below as they appear in 42 U.S.C. 7408 (f)(1).

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or HOV;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple-occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) reducing emissions from extreme cold-start conditions (newly eligible);

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for SOV travel, as part of transportation planning and development efforts of a locality, includ ing programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths,

tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) programs to encourage removal of pre-1980 vehicles (Excluded from Eligibility).

3. *Extreme Low-Temperature Cold Start Programs:*

Projects intended to reduce emissions from extreme cold-start conditions are now eligible for CMAQ funding. This TCM is listed in 42 U.S.C. 7408 (f)(1) and was heretofore excluded from eligibility for CMAQ funding. Examples of such projects include:

- Retrofitting vehicles and fleets with water and oil heaters; and
- Installing electrical outlets and equipment in publicly-owned garages or fleet storage facilities (see also section below on public-private partnerships for a possible expansion to privately-owned equipment and facilities).

4. *Public-Private Partnerships:*

The TEA–21 provides greater access to CMAQ funds for projects which are cooperatively implemented under agreements between the public and private sectors and/or non-profit entities. The new statutory language leads to several important changes regarding the eligibility of joint public-private initiatives. Nevertheless, it remains the responsibility of the cooperating public agency to apply for CMAQ funds through the metropolitan planning process and to oversee and protect the investment of Federal funds in a public-private partnership.

The TEA–21 requires that a legal, written agreement be in place between the public agency and private or non-profit entity before implementing a CMAQ-funded project. This provision supersedes the requirement under previous guidance that private entities have public agency sponsors before participating in CMAQ-funded projects. These agreements should clearly specify the use to which CMAQ funding will be put; the roles and responsibilities of the participating agencies; cost-sharing arrangements for capital investments and/or operating expenses; and how the disposition of land, facilities and equipment will be effected should the original terms of the agreement be changed, such as insolvency or a change in the ownership of the private entity.

While the new statute provides greater latitude in funding projects initiated by private or non-profit entities, it also raises concerns about the use of public funds to benefit a specific private entity. Since the public benefit is air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. Furthermore, this new flexibility requires that greater emphasis be placed on an open, participatory process leading up to the selection of projects for funding. Because of concerns about the equitable use of public funds, FHWA and FTA consider it essential that all interested parties have full and timely access to the process of selecting projects for CMAQ funding. This should involve open solicitation for project proposals; objective criteria developed for rating candidate projects; and announcement of selected projects.

The TEA–21 also contains some restrictions and special provisions on the use of CMAQ funds in public-private partnerships. Eligible costs under this section may *not* include costs to fund an obligation imposed on private sector or non-profit entities under the CAA or any other Federal law. For example, CMAQ funds may not be used to fund mandatory control measures such as Stage II Vapor Recovery requirements placed on fuel sellers. Energy Policy Act requirements which apply to private sector entities are not eligible for CMAQ funds. However, if the private or non-profit entity is clearly exceeding its obligations under Federal law, CMAQ funds may be used for that incremental portion of the project.

Decisions over which projects and programs to fund under CMAQ should continue to be made through a cooperative process involving the State departments of transportation, affected MPOs, transit agencies and State and local air quality agencies. All projects funded with CMAQ funds must be included in conforming transportation plans and TIPs in accordance with the metropolitan planning regulations (23 CFR 450.300), the transportation conformity requirements (40 CFR parts 51 and 93), and NEPA requirements.

Activities eligible to be considered as meeting the local match requirements under the public-private partnership provisions include:

- Ownership or operation of land, facilities or other physical assets;
- Carrying out construction or project management; and
- Other forms of participation approved by the U.S. DOT Secretary.

The TEA–21 also contained special provisions for alternative fuel projects that are part of a public-private partnership. For purchase of privately-owned vehicles or fleets using alternative fuels, activities eligible for CMAQ funding are limited to the Federal share of the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle. Further, if other Federal funds are used for vehicle purchase in addition to CMAQ funds, such Federal funds must be applied to the incremental cost before CMAQ funds are applied.

Cost sharing of total project expenses, both capital and operating, is a critical element of a successful public-private venture. This is even more important if the private entity is expected to realize profits as part of the joint venture. State and local officials are urged to consider a full range of cost-sharing options when developing a public-private partnership, including a larger State/local match than the usual 20 percent required under Federal law.

5. *Alternative Fuels:*

The purchase of publicly-owned, alternative fuel vehicles is eligible for CMAQ funding (for information on eligible public-private sector alternative fuel projects see the discussion on public-private partnerships above).

Since all alternative fueled vehicles are not necessarily good for air quality, proposals for alternative fuel conversion should be coordinated with the State air agency and be aimed primarily at air quality improvement. As with all CMAQ proposals, it must be demonstrated that the proposed switch to alternative fuels is effective in reducing the specific pollutant(s) causing the air quality violation.

Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding. Consideration of such projects should be coordinated with air quality agencies prior to selection for funding under the CMAQ program. This coordination will ensure that such projects are consistent with SIP strategies to attain the NAAQS or in maintenance plans to ensure continued maintenance of the NAAQS.

The establishment of publicly-owned, on-site fueling facilities and other infrastructure needed to fuel alternative-fuel vehicles are also eligible expenses. If privately-owned fueling stations are in place and are reasonably accessible and convenient, then CMAQ funds may not be used to construct or operate publicly-owned fueling stations except under a public-private partnership. Such an activity would interfere with private enterprise, and needlessly use transportation/air quality funds for services duplicated in the area.

6. *Traffic Flow Improvements:*

The metropolitan planning provisions of TEA–21 (23 U.S.C. 134(i)(3) and 49 U.S.C. 5305) require that the

metropolitan planning process in all Transportation Management Areas (metropolitan areas of 200,000 or more in population) include a congestion management system.

Projects to develop, establish, and implement the congestion management system for both highway and transit facilities, whether under the provisions of 23 U.S.C. §§ 134 or under a State's own procedures, remain eligible for CMAQ funds where it can be demonstrated that such use is likely to reduce transportation-related emissions.

In addition to traffic signal modernization, coordination, or synchronization projects designed to improve traffic flow within a corridor or throughout an area like a central business district, Intelligent Transportation Systems (ITS), traffic management and traveler information systems can be effective in reducing traffic congestion, enhancing transit bus performance and improving air quality. The following have the greatest potential for improving air quality:

- regional multi-modal traveler information systems;
- traffic signal control systems;
- freeway management systems;
- transit management systems;
- incident management programs;
- electronic fare payment systems; and
- electronic toll collection systems.

While interconnected traffic signal control systems and freeway management systems have been recognized for their air quality improvement benefits, other user services like electronic fare and toll collection systems can be useful in reducing or eliminating air quality ''hot spots''. Individually, these core infrastructure elements can reduce emissions and therefore qualify for CMAQ funding. However, when linked together in a system, their benefits are likely to be greater.

Agencies seeking to implement ITS projects must demonstrate consistency with the National ITS Architecture. This is addressed in separate guidance.

Operating expenses for traffic flow improvements are eligible for CMAQ funding where they can be shown to: (1) have air quality benefits, (2) the expenses are incurred from new or additional services, and (3) previous funding mechanisms, such as fares or fees for services, are not displaced.

Since CMAQ-funded projects should contribute to the attainment or maintenance of a NAAQS, it must be found that these operating costs are necessary for the overall system to contribute to attainment or maintenance of an ambient air quality standard. It is reasonable to assume that, after several years, a transportation service may no longer be considered to be an air quality improvement project, but that it has become a part of the existing transportation network. Hence, FHWA and FTA field offices are advised to use the consultation process with EPA to make a determination that operating assistance for traffic management systems, traveler information systems and other ITS projects or programs, beyond the initial 3-year period of eligibility, will assist in the attainment or maintenance of an air quality standard. (Also see operating assistance eligibility discussion earlier in this guidance.)

7. *Transit Projects:*

Improved public transit is one of the TCMs identified in section 108(f)(1)(A) of the CAA. However, not all transit improvements are eligible under the CMAQ program. The general guideline for determining eligibility is whether an increase in transit ridership can reasonably be expected to result from the project. As with all CMAQ-funded projects, this must be supported by a quantified estimate of the emissions effects due to the project.

Facilities: New transit facilities are eligible if they are associated with new or enhanced mass transit service. If the project is rehabilitation, reconstruction, or maintenance of an existing facility, it is not eligible since there would be no change in emissions caused by the project. Other FTA grant programs can be used for upgrading existing facilities.

Vehicles: Acquisition of new transit vehicles (bus, rail, van) to expand the fleet are eligible. New vehicles acquired as replacements for existing fleet vehicles are also eligible; however, diesel-powered replacement vehicles will have minimal impact on attaining the ozone, PM, and CO standards. For these projects in particular, emissions effects must be documented so that they can be arrayed with other CMAQ proposals and allow informed decisions on the best use of available funds.

Operating Assistance: CMAQ funding can be used to support the start-up of new transit services. In order to be eligible, the service must be a discrete new addition to the system so that operating costs can be easily identified. Operating assistance is for a maximum of 3 years, after which other sources of funding must be used if the service is to be continued.

Fare subsidies: CMAQ funds may be used to subsidize regular transit fares, but only if the reduced or free fare is part of an overall program for preventing exceedances of a national air quality standard during periods of high pollutant levels. Examples include metropolitan areas that have implemented voluntary mobile source emission reduction programs which promote a range of measures individuals can take to reduce ozone-forming emissions. ''Ozone-action'' programs, designed to avoid exceedances when ozone concentrations are high, are bolstered by more permanent measures aimed at discouraging SOV driving. Refer to section VII.12 for additional discussion of fare/fee subsidies.

8. *Bicycle and Pedestrian Facilities and Programs:*

Bicycle and pedestrian facilities and programs are included as a TCM in section 108(f)(1)(A) of the CAA. Included as eligible projects are:

- construction of bicycle and pedestrian facilities;
- non-construction projects related to safe bicycle use; and
- establishment and funding of State bicycle/pedestrian coordinator positions, as established in the ISTEA, for promoting and facilitating the increased use of non-motorized modes of transportation. This includes public education, promotional, and safety programs for using such facilities.

9. *Travel Demand Management:*

Travel demand management encompasses a diverse set of activities ranging from traditional carpool and vanpool programs to more innovative parking management and road pricing measures. Many of these measures are specifically referenced in the legislation creating the CMAQ program. Travel demand management projects meeting the basic eligibility requirements of the FHWA and FTA funding programs are eligible for CMAQ funding. Eligible activities include: market research and planning in support of travel demand management (TDM) implementation; traffic calming measures; capital expenses required to implement TDM measures; operating assistance to administer and manage TDM programs for up to 3 years; as well as marketing and public education efforts to support and bolster TDM measures.

Experience to date suggests that new transportation service has the greatest chance of success if offered along with complementary measures which discourage SOV use, such as parking restrictions or differential parking fees. Several provisions in TEA–21 require metropolitan areas to consider TDM measures in the planning process and this guidance seeks to encourage their development and implementation.

With respect to traffic calming measures, such projects should be examined on a case-by-case basis to assess eligibility. Not all traffic calming

measures will lead to reduced emissions and States and MPOs should analyze these projects in the local context in which they would be implemented.

10. *Outreach and Rideshare Activities:*

Outreach activities, such as public education on transportation and air quality, advertising of transportation alternatives to SOV travel, and technical assistance to employers or other outreach activities relating to promoting non-SOV travel options have been, and continue to be, eligible for CMAQ funds. Such outreach activities may be funded under the CMAQ program for an indefinite period.

Outreach activities differ fundamentally from the establishment of transportation services. They are communication services that are critical to successful implementation of transportation measures and may equally affect new and existing transit, shared ride, I/M, traffic management and control, bicycle and pedestrian, and other transportation services. As such, they are intended to continue reaching new audiences each time they are implemented, and restrictions on the length of time they may be funded seems contrary to one of the program's goals of effecting behavioral changes to reduce transportation emissions.

Marketing Programs: Marketing programs to increase use of transportation alternatives to SOV travel and public education campaigns involving the linkage between transportation and air quality are eligible operating expenses. Transit ''stores'' selling fare media and dispensing route and schedule information which occupy leased space are also eligible. In addition, programs to promote the recently enacted Tax Code change related to commute benefits are eligible for CMAQ funding. [Note: The Internal Revenue Code 26 U.S.C. § 132(f)) allows employers to exclude up to $65 per month for transit and vanpool expenses and up to $175 per month for qualified parking expenses from an employee's gross income. (For taxable years after December 31, 2001, the amount for transit and vanpooling increases to $100 per month and is indexed for inflation (as is already the case for qualified parking expenses) beginning for taxable years after December 31, 2002.) As a result of TEA–21 amendments to the Code, employers may either provide these benefits free to employees as a tax-free benefit, in addition to existing compensation and benefits, or allow employees to use their own gross income before taxes to purchase these benefits through their employers, thus saving on taxes.]

Carpooling and Vanpooling: Carpool and vanpool programs include computer matching of individuals seeking to carpool and employer outreach to establish rideshare programs and meet CAA requirements. These activities, even if they are part of an existing rideshare program, are eligible for CMAQ funding. New or expanded rideshare programs, such as new locations for matching services, upgrades for computer matching software, etc. are also eligible and may be funded for an indefinite period of time for both carpool and vanpool services.

The implementation of a vanpool operation entails purchasing or leasing vehicles and providing a transportation service. Therefore, proposals for vanpool activities such as these must be for new or expanded service to be eligible and are subject to the 3-year limitation on operating costs.

Under the CMAQ program, the purchase price of a publicly-owned vehicle for a vanpool service does not have to be paid back to the Federal Government. Requiring payback would place an additional constraint to wider implementation and usage of vanpool programs. Nonetheless, CMAQ funds should not be used to buy or lease vans that would be in direct competition with and impede private sector initiatives. Consistent with the statewide and metropolitan planning regulation (23 CFR 450.300), States and MPOs should consult with the private sector prior to using CMAQ funds to purchase vans, and if local private firms have definite plans to provide adequate vanpool service, CMAQ funds should not be used to supplant that service.

Transportation Management Associations: Transportation Management Associations (TMAs) are comprised of groups of individuals, firms or employers who organize to address the transportation issues in their immediate locale. The CMAQ funds may be used for the establishment of TMAs provided that the TMA performs a specified purpose in the project agreement that will be part of any air quality improvement strategy. The TMAs can play a useful role in brokering transportation services to private employers, and CMAQ funds may be used to contract with TMAs for this purpose. Eligible costs include coordinating and marketing rideshare programs, providing shuttle services, developing parking management programs, etc. Eligible expenses for reimbursement of associated TMA start-up costs are limited to 3 years.

11. *Telecommuting:*

The DOT supports the establishment of telecommuting programs. Planning, technical and feasibility studies, training, coordination, marketing and promotion are eligible activities under CMAQ. Physical establishment or construction of telecommuting centers, computer and office equipment purchases and related activities are not eligible.

12. *Fare/Fee Subsidy Programs:*

The CMAQ program allows funding for user fare or fee subsidies in order to encourage greater use of alternative travel modes (e.g., carpool, vanpool, transit, bicycling and walking). This policy has been established to encourage areas to take a more comprehensive approach—including both supply and demand measures—in reducing transportation emissions.

Transit Services: CMAQ funds can be used to subsidize transit fares only if the reduced fare is offered as a component of a comprehensive, targeted program to reduce SOV use during episodes of high pollutant concentrations. (Also see Transit Project eligibility section.)

Other Demand Management Strategies: CMAQ funds can be used to subsidize fares or fees for vanpools, shuttle services, flat-fare taxi programs and other demand management strategies. Examples of how the fare/fee subsidy might be used include: a program subsidizing empty seats during the formation of a new vanpool; reduced fares for shuttle services within a defined area, such as a flat-fare taxi program; or providing financial incentives for carpooling, bicycling, and walking in conjunction with a commuter choice or other program such as those described under Outreach and Rideshare Activities above.

Other components of fare/fee subsidy programs include public information and marketing of non-SOV alternatives, parking management measures, employer-based commuter choice programs, and better coordination of existing transportation services. Fare/fee subsidies under the CMAQ program are intended as short-term incentives. As with operating assistance, there is a maximum 3-year time limit.

13. Intermodal Freight:

The CMAQ funds have been, and continue to be, used for improved intermodal freight facilities where air quality benefits can be shown. Capital improvements as well as operating assistance meeting the conditions of this guidance are eligible.

14. Planning and Project Development Activities:

Project development activities that lead to construction of facilities or new

services and programs with air quality benefits, such as preliminary engineering or project planning studies are eligible. This includes studies for the preparation of environmental or NEPA documents and related transportation/air quality project development activities. Project development studies directly related to a TCM are also eligible. In the event that air quality monitoring is necessary to determine the air quality impacts of a proposed project which is eligible for CMAQ funding, the costs of that monitoring are also eligible. As is the case with all CMAQ funded activities, all projects proposed for funding must be included in the MPO Plan and TIP and must meet the metropolitan planning requirements.

General planning activities, such as economic or demographic studies, that do not directly propose or support a transportation/air quality project or are too far removed from project development to ensure any emission reductions are not eligible for funding. Funding for preparation of NEPA or other environmental documents that are not related to a transportation project to improve air quality is also ineligible. Such activities should be funded with other appropriate title 23 or title 49 FTA funds.

Region- or area-wide air quality monitoring is not eligible because such projects do not themselves yield air quality improvements nor do they lead directly to projects that would yield air quality benefits. Air quality monitoring is normally a State air quality agency responsibility which is funded under section 105 of the CAA. If the MPO or State chooses, air quality monitoring could also be funded as a transportation planning activity and appropriate title 23 funds used.

15. I/M Eligibility:

Emission I/M programs and related activities show strong potential for improving air quality and are cost-effective uses of CMAQ funds. Recognizing this, construction of facilities and purchase of equipment for I/M stations are eligible for CMAQ funds. Projects necessary for the development of these I/M programs and one-time start-up activities, such as updating quality assurance software or developing a mechanic training curriculum, are also eligible activities. Operating expenses are eligible for CMAQ funding subject to the general conditions applying to all new transportation services. Specifically, the I/M program must constitute new or additional efforts; existing funding (including inspection fees) should not be displaced, and operating expenses are only eligible for 3 years.

Funds under the CMAQ program may be used for the establishment of I/M programs at publicly-owned I/M facilities. Publicly-owned I/M facilities may be constructed, equipment may be purchased, and the facility operated for up to 3 years with CMAQ funds, provided that the conditions covering operations described above are met.

The establishment of I/M programs at privately-owned stations, such as service stations that own the equipment and conduct emission test-and-repair services, can only be funded under the CMAQ program under the provisions covering ''public-private partnerships'' contained in this guidance. However, if the State relies on private stations, State or local administrative costs for the planning and promotion of the State's I/M program may be funded under the CMAQ program.

The establishment of ''portable'' I/M programs is also eligible under the CMAQ program, provided that they are public services, contribute to emission reductions and do not conflict with statutory I/M requirements or EPA implementing regulations. Like all CMAQ-funded projects, these programs must meet any relevant NEPA requirements and must be included in the area's plan and TIP before they can be funded.

16. *Magnetic Levitation Transportation Technology Deployment Programs:*

CMAQ funds may be used to fund a portion of the full project costs (including planning, engineering, and construction) pursuant to section 1218—Magnetic Levitation Transportation Technology Deployment Program of TEA–21 (23 U.S.C. 322) and in accordance with the provisions of section 1218.

17. *Experimental Pilot Projects:*

States and local areas have long experimented with various types of transportation services—and different means of employing them—in an effort to better meet the travel needs of their constituents. These ''experimental'' projects may not meet the precise eligibility criteria for Federal and State funding programs, but they may show promise in meeting the intended public purpose of those programs in an innovative way. The FHWA and FTA have supported this approach in the past and funded some of these projects as demonstrations to determine their benefits and costs.

The CMAQ provisions of TEA–21 allow experimentation provided that the project or program can reasonably be defined as a ''transportation'' project and that emission reductions can reasonably be expected ''through reductions in vehicle miles traveled (VMT), fuel consumption or through other factors.'' This guidance encourages States and MPOs to creatively address their transportation/air quality problems and to experiment with new services, innovative financing arrangements, public-private partnerships and complementary approaches that constitute comprehensive strategies to reduce emissions through transportation programs. The CMAQ program can be used to support a well conceived project even if the proposal may not otherwise meet the eligibility criteria of this guidance. Proposals submitted for funding under this provision should show promise in reducing transportation emissions in nonattainment or maintenance areas and should have the concurrence of the MPO, State transportation agency and the FHWA/FTA. Such proposals must also be coordinated with EPA and State/local air quality agencies.

While the CMAQ provisions of TEA–21 were written broadly to encourage an innovative approach, the principles of sound program management must still be followed. Under this approach, there will likely be proposals for funding with which transportation agencies have little experience. As such, before-and-after studies are required to determine the actual project impacts on the transportation network (measured in VMT or trips reduced, or other appropriate measure) and on air quality (emissions reduced). An assessment of the project's benefits should be forwarded to FHWA or FTA documenting the immediate impacts as well as a projection of the project's long-term benefits.

All projects funded under this section should be explicitly identified in the annual report of CMAQ activities as required under section IX of this guidance. In future years, when before-and-after studies are complete, a summary of the actual project benefits should also be included in the annual report. The amount obligated for proposals made pursuant to this section should not exceed 25 percent of a State's yearly CMAQ apportionment.

VIII. Project Selection Process—General Conditions

Proposals for CMAQ funding should include a precise description of the project, providing information on the project's size, scope and timetable. Also, an assessment of the proposal's expected emission reductions in accordance with the provisions

described below is required. States, MPOs, and transit agencies are encouraged to develop procedures for assessing the emission reduction benefits of CMAQ projects. States are also required to submit annual reports detailing the obligations made under the CMAQ program during the previous fiscal year.

Air Quality Analysis

1. *Quantitative Analyses:*

Quantitative assessment of how the proposal is expected to reduce emissions is extremely important to assist areas in developing and funding the most effective projects in nonattainment and maintenance areas. They also provide an objective basis for comparing the costs and benefits of competing proposals for CMAQ funding. Since States are required to submit annual reports (see discussion below), analysis of air quality benefits for individual project proposals will assist in their preparation. It is particularly important to assess and quantify the benefits of projects that increase or improve basic transportation services. This includes assessing emission reductions of transit, traffic flow improvements, ITS projects and programs, ridesharing, bicycle and pedestrian improvements. In addition, analyses are expected for conversions to alternative fuels and for I/M programs.

Decisions regarding the level and type of air quality analysis needed, as well as the credibility of its results, are left to FTA and FHWA field staff, in consultation with EPA. Across the country, State and local transportation/air quality agencies have different approaches, analytical capabilities and technical expertise with respect to such analysis. At the national level, it is not feasible to specify a single method of analysis applicable in all cases.

While no single method is specified, every effort must be taken to ensure that determinations of air quality benefits are credible and based on a reproducible and logical analytical procedure that will yield quantitative results of emission reductions. Of course, if an air quality analysis has been done for other reasons, it may also be used for this purpose.

2. *Qualitative Assessment:*

Although quantitative analysis of air quality impacts is required whenever possible, some improvements may not lend themselves to rigorous quantitative analysis because of the project's characteristics or because practical experience is lacking to adequately analyze the project. In these cases, a qualitative assessment based on a reasoned and logical examination of how the project or program will decrease emissions and contribute to attainment or maintenance of a NAAQS is appropriate and acceptable.

Public education, marketing and other outreach efforts fall into this category. The primary benefit of these activities is enhanced communication and outreach that is expected to influence travel behavior, and thus, air quality. Yet tracing the benefits to air quality through the intervening steps requires a multi-disciplinary approach that incorporates market research analysis, base case documentation, surveying, and other analytical techniques which may not be readily available to many transportation agencies. As such, these projects which can include advertising alternatives to SOV travel, employer outreach, public education campaigns, and communications or outreach to the public during ''ozone alerts,'' or similar programs do not require a quantitative analysis of air quality benefits.

3. *Analyzing Groups of Projects:*

In many situations, it may be more appropriate to examine the impacts of more comprehensive strategies to improve air quality by grouping TCMs. A strategy to reduce reliance on single-occupant vehicles in a travel corridor, for example, could include transit improvements coupled with demand management. The benefits of such a strategy should be evaluated together rather than as separate projects. Transit improvements, ridesharing programs or other TCMs affecting an entire region may be best analyzed in this fashion.

IX. Program Oversight Responsibility

Annual Reports

To assist in meeting statutory obligations, States are required to prepare annual reports for FHWA, FTA, and the general public that specify how CMAQ funds have been spent and the expected air quality benefits. Annual reporting enhances accountability and the annual report enables FHWA and FTA to be responsive to the Congress on the utilization of CMAQ funds and their impact.

This report should be provided by the first day of February following the end of the previous Federal fiscal year (September 30) and cover all CMAQ obligations for that fiscal year. The report should include:

1. A list of projects funded under CMAQ, best categorized by one of the following eight project types:

- public-private partnerships;
- experimental pilot projects;
- transit: facilities, vehicles and equipment, operating assistance for new transit service, etc;
- shared-ride: vanpool and carpool programs and parking for shared-ride services, etc;
- traffic flow improvements: traffic management and control services, signalization projects, ITS projects, intersection improvements, and construction or dedication of HOV lanes, etc;
- demand management: trip reduction programs, transportation management plans, flexible work schedule programs, vehicle restriction programs, etc.;
- pedestrian/bicycle: bikeways, storage facilities, promotional activities, etc; and
- I/M and other TCMs (not covered by the above categories).

For reporting purposes, project developmental activities, as well as public education, marketing and other outreach efforts that are eligible under the CMAQ program should be reported in the same category as the project or program they support.

2. The amount of CMAQ funds obligated for each project (or project category where groups of projects are analyzed together) for the year, disaggregated by the categories of projects listed above; and

3. A tabulation of the estimated emissions benefits for each project (or group of projects) for the year summed from project-level analyses and expressed as reductions of ozone precursors (volatile organic compounds and nitrogen oxides), CO, or PM–10. These reductions should be expressed as kilograms per day removed from the atmosphere.

Note that the annual report should now specifically include and identify any projects funded under the Experimental Pilot Projects provision of this guidance as well as the newly eligible public-private partnerships (see section VII). Summaries of before-and-after studies should be included as they become available.

Federal Agency Responsibilities and Coordination

The FTA and FHWA field offices should establish a consultation and coordination process with their respective EPA regional offices for early review of CMAQ funding proposals. Review by EPA is critical to assist the determination of whether the CMAQ-proposed projects will have air quality benefits and to help assure that effective projects and programs are approved for CMAQ funding. Proposals for funding should be forwarded to EPA as soon as possible to ensure timely review. Where Memorandum of Understanding (MOU) are in place to facilitate Federal agency

review, such MOUs should be updated as needed.

Either the local FTA or FHWA office will be responsible for project administration. In cases where the project is clearly related to transit, FTA will determine the project's eligibility and administer the project. Similarly, traffic flow improvements that improve air quality through operational improvements of the road system are be administered by FHWA. For projects that include both traffic flow and transit elements, such as park-and-ride lots and intermodal projects, the administering agency will be decided on a case-by-case basis. Following initial review by the administering agency and consultation with EPA, the administering agency makes the final determination on whether the project or program is likely to contribute to attainment of a NAAQS and is eligible for CMAQ funding. The consultation process should provide for timely review and handling of CMAQ funding proposals.

State and MPO Responsibilities

Decisions over which projects and programs to fund under CMAQ should be made through the appropriate metropolitan and/or statewide planning process which would include the involvement of State and local air quality agencies. This process serves to develop a pool of potential CMAQ projects to be considered for funding in a State's nonattainment and maintenance areas. States, MPOs and transit agencies, in consultation with air quality agencies, are encouraged to cooperatively develop criteria for selection of CMAQ projects. The programming of CMAQ projects should be consistent with the appropriate metropolitan plan.

Projects to be funded with CMAQ funds must be included in the plans and TIPs that are developed by the MPOs in cooperation with the State and transit operators. Under the metropolitan planning regulations (23 CFR 450.300), TIPs must contain a priority list of projects to be carried out in the 3-year period following adoption. As a minimum, projects must be identified by year and proposed funding source. For projects targeting CMAQ funds, priority in the TIP should be based on the projects' estimated air quality benefits.

Since the TIPs must be consistent with available funding, it is important that the State advise the MPOs of the estimated amount of CMAQ funds in a timely manner. Once CMAQ projects are included in a TIP (approved by the MPO and the Governor), and included in a FHWA/FTA-approved statewide TIP, those projects in the first year may be implemented. Projects in the second or third year of the TIP could be advanced for implementation using the specified project selection procedures in the planning regulation.

It is the State's responsibility to manage its obligation authority made pursuant to title 23 to ensure that CMAQ (and other Federal-aid) funds are obligated in a timely fashion and do not lapse. Other provisions affecting the overall Federal-aid program, such as advance construction authority, apply to the CMAQ program as well.

Close coordination is needed between the State and MPO to assure that CMAQ funds are used appropriately and to maximize their effectiveness in meeting the CAA requirements. States and MPOs must fulfill this responsibility so that nonattainment and maintenance areas are able to make good-faith efforts to attain and maintain the NAAQS by the prescribed deadlines. State DOTs and MPOs should consult with State and local air quality agencies to develop an appropriate project list of CMAQ programming priorities which will have the greatest impact on air quality.

[FR Doc. 00–4224 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–6252]

CSX Transportation, Inc.; Cancellation of Public Hearing

On January 21, 2000, the Federal Railroad Administration (FRA) published a notice in the **Federal Register** (65 FR 3529) announcing that a public hearing will be held on February 23, 2000, based upon CSX Transportation, Inc.'s (CSXT) request to obtain a temporary waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, title 49, Code of Federal Regulations (CFR), part 229, CSXT has requested that the public hearing be postponed for a period of at least 30 days in order to provide time for all interested parties to resolve differences regarding the petition. FRA is therefore canceling the February 23 hearing.

All parties expressing an interest in this proceeding have been notified of this request and have concurred in this action. Depending on the results of discussions among the interested parties, a hearing may or may not be scheduled in the future. If a hearing is rescheduled, a notice will be published in the **Federal Register**.

Issued in Washington, DC on February 18, 2000.

Michael T. Haley,

Deputy Chief Counsel, Federal Railroad Administration.

[FR Doc. 00–4348 Filed 2–22–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33849]

Colorado Central Railroad Company, Operation Exemption, Yreka Western Railroad Company

Colorado Central Railroad Company (Colorado), a noncarrier, newly created to become a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 8.9 miles of rail line currently owned by Yreka Western Railroad Company (Yreka), between milepost 0.0 in Montague and milepost 8.9 near Yreka, in Siskiyou County, CA.[1]

Colorado indicates that it has executed an agreement with Yreka to provide common carrier freight service as well as excursion passenger service.[2]

The transaction was scheduled to be consummated on or after January 31, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33849, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–

[1] Colorado states that the Surface Transportation Board (Board) had previously authorized abandonment by Yreka of its entire 8.9 miles of rail line. *See Yreka Western Railroad Company—Abandonment Exemption—in Siskiyou County, CA,* STB Finance Docket No. AB–246 (Sub-No. 2X) (STB served May 4, 1999). Colorado further states that, as of the January 24, 2000 filing of the verified notice of exemption, the abandonment had not been consummated.

Colorado certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its revenues are not projected to exceed $5 million.

[2] Colorado asserts that intrastate excursion rail passenger service is not subject to the Board's regulatory jurisdiction, citing *Napa Valley Wine Train, Inc.-Pet. for Declaratory Order,* 7 I.C.C.2d 954, 960–65 (1991) and cases discussed therein and *Magner-O'Hara Scenic Ry.* v. *I.C.C.,* 692 F.2d 441 (6th Cir. 1982).

0001. In addition, one copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–4101 Filed 2–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a General Program Test: Procedure for Transfer of Accompanied (International) In-Transit Baggage

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test program that allows participating air carriers to electronically transmit information to Customs to transfer accompanied air passenger (checked) baggage from one aircraft entering the United States to another aircraft departing from the United States enroute to a foreign destination. For carriers participating in the test, this information filing procedure will replace the filing procedure for the air cargo manifest form (Customs Form (CF) 7509) currently provided for under the Customs Regulations and will permit more effective in-transit passenger and in-transit baggage processing procedures. The test covers arriving flights of air carriers participating at an acceptable performance level in the Advance Passenger Information System (APIS) program. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the information transmission and baggage processing procedures required of those participating in the test.

EFFECTIVE DATES: The testing period will commence no earlier than March 24, 2000, and will run for approximately one year. Comments concerning this notice, including eligibility standards, application process, and information submission requirements, must be received on or before March 24, 2000. To participate in the test, the necessary information, as set forth in this notice, must be filed with Customs on or before March 24, 2000.

ADDRESSES: Written comments regarding this notice should be addressed to Passenger Programs, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.4D, Washington, D.C. 20229. Air carriers that have entered into an agreement with the Government by signing an APIS Memorandum of Understanding (MOU) may request participation in the test program by providing written notification, to the port director with jurisdiction over the airport where the transfer of accompanied international in-transit baggage will occur, of their acceptance of all the conditions outlined in the ''Conditions of Operation'' section of this notice. Air carriers who wish to participate in the test can apply to participate in the APIS program by contacting Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Steve A. Gilbert, Office of Field Operations (202) 927–1391. For regulatory matters: Larry L. Burton, Office of Regulations and Rulings (202) 927–1287.

SUPPLEMENTARY INFORMATION:

Background

Customs recognizes that commercial air travel is a dynamic and ever changing industry. The establishment of new ways of operating within the industry, including gateway airports, air carrier hubs, and the advent of global alliances, fosters new working relationships between air carriers. Air carriers are continually looking to improve international passenger processing, one aspect of which is the efficient transfer of international in-transit baggage, a matter also of concern to Customs. The announced test is designed to test procedures for processing international in-transit baggage and for filing certain information in place of an air cargo manifest.

The announced test program pertains to passengers and their baggage arriving in the United States aboard one aircraft and departing from the United States aboard another aircraft. Thus, the test pertains to international in-transit passengers and their international in-transit baggage, i.e., in transit through the United States to a foreign destination.

The baggage referred to is checked baggage, not carry on baggage. Because checked baggage is stored below the passenger cabin in the baggage compartment of the aircraft, passengers do not have access to it during flights. Because the passengers are on board the same aircraft as their checked baggage, the baggage is considered accompanied baggage (as opposed to unaccompanied baggage).

Thus, to reiterate, the test program covers the following specific kind of baggage: accompanied, international, in-transit, checked baggage that arrives in the United States on board one aircraft and departs from the United States on board another aircraft. (Hereafter, this baggage will be referred to merely as in-transit baggage or baggage.)

The Air Cargo Manifest Requirement Under the Customs Regulations

Under § 122.48(a) of the Customs Regulations (19 CFR 122.48(a)), air carriers arriving in the United States from a foreign area must file an air cargo manifest (Customs Form (CF) 7509) for all cargo on board. (See 19 U.S.C. 1431(a) and 1644a(b)(1)(E).) This filing requirement can be met by manually submitting the manifest form (CF 7509) to Customs or by filing an electronic manifest under the Automated Manifest System (AMS). (See 19 U.S.C. 1431(b), 1431(d)(1), and 1644a(b)(1)(E).)

Section 122.48(e) of the Customs Regulations (19 CFR 122.48(e)) pertains specifically to accompanied baggage entering the United States in one aircraft and leaving the United States in another aircraft. It provides that when passengers do not have access to their baggage while in transit through the United States, the baggage is considered cargo and must be listed on the air cargo manifest. (See also § 122.101 of the Customs Regulations (19 CFR 122.101), which provides that such baggage must be listed on the air cargo manifest in accordance with § 122.48(e).)

Thus, the Customs Regulations require that in-transit baggage of the kind covered by the announced test program must be listed on an air cargo manifest submitted to Customs when passengers do not have access to their baggage while in transit through the United States (between flights).

Under the test program, in-transit passengers will not have access to their in-transit baggage between flights, but the ordinarily applicable air cargo manifest filing requirement under the Customs Regulations will be replaced by a procedure requiring the test participant, prior to the flight's arrival, to electronically file certain information via the Advanced Passenger Information

System (APIS) program (see ''APIS'' section below) and to file certain other information either by manual delivery at the port of arrival or by allowing Customs access to its reservations data base. (See Conditions (1) and (2) of the ''Conditions of Operation'' section of this notice.) The required information that will be provided electronically via APIS pertains to passengers, including in-transit passengers. The required information that will be provided either by manual delivery or through Customs access to the participant's reservations data base includes information on the in-transit baggage.

Participants that submit the required information will not have to file an air cargo manifest (CF 7509) for their in-transit baggage, either manually or electronically. This exemption applies only to in-transit baggage covered by the test program; the requirement that a manifest must be filed for cargo remains in force.

In-Transit Baggage Processing

Ordinarily, although procedures can vary somewhat depending on the airport, in-transit passengers deplaning from the arriving aircraft pick up their checked baggage at the baggage carousel, proceed through Customs processing (inspection) with their baggage, and then submit the baggage to a transfer desk where it is placed in a staging area to be picked up for loading onto the departing aircraft. Because, under this procedure, passengers access their baggage between flights, there is no requirement to list the baggage on the air cargo manifest for submission to Customs. This ordinary practice that occurs at most airports is provided for under § 122.101(a) of the Customs Regulations (19 CFR 122.101(a)).

The test program differs from the ordinary procedure of § 122.101(a), as described above. Under the test, the baggage will not be released to in-transit passengers between flights for Customs processing and subsequent submission to the transfer desk. Rather, after being off-loaded from the arriving aircraft, the baggage will be moved (by the arriving carrier or authorized airport personnel) to a Customs approved security area where some form of inspection, at Customs discretion, may take place. From the security area, whether or not Customs inspects all or some of the baggage, the baggage will be transported to the departing aircraft. The in-transit passengers, in most instances, will proceed through Customs processing upon deplaning, without their checked baggage, to await boarding onto the departing aircraft. (However, some airport facilities provide for secure areas where deplaning in-transit passengers wait to board the departing aircraft, without going through Customs processing.)

Processing in-transit baggage under the test program will also differ from the procedure provided for under § 122.101(b) (a voluntary alternative to the § 122.101(a) procedure), which allows passengers to have the air carrier treat their baggage as cargo, with different processing requirements and fees, including an air cargo manifest filing requirement. Under the test, the baggage will not be treated as cargo and the air cargo manifest will not be filed (either manually or electronically).

The APIS Program

The APIS program is an already existing and independent voluntary program. Air carrier participants in APIS enter into a memorandum of understanding (MOU) with the Government under which they agree to electronically provide certain information to Customs and the Immigration & Naturalization Service (INS) prior to a flight's arrival in the United States. The information provided pertains, in part, to the passengers on board the aircraft and depends upon the specific terms of the MOU.

Analysis of this information by Customs and the INS, while these flights are enroute to the United States, allows for expedited processing of the vast majority of the passengers when they arrive in the United States. The expedited processing of these flights is referred to as ''Blue Lane processing'' in the APIS MOU, and flights for which air carriers have transmitted required data at or above minimum standards set forth in the MOU (accuracy rates) are considered ''Blue Lane eligible'' flights. Customs and the INS monitor the performance of air carriers participating in APIS to evaluate their compliance with the standards of the MOU. Less than acceptable performance can result in a loss of Blue Lane eligibility status for a given flight. (An APIS participating air carrier may have several APIS qualified flights that originate from different foreign places and/or arrive at several different U.S. airports. Loss of Blue Lane eligibility for a given flight (or flights) would not result necessarily in suspension from the APIS program altogether.)

While APIS is a separate and independent program that has been in operation for several years, it has been integrated into and made a component of the announced test (see Condition (1) of the ''Conditions of Operation'' section). Air carriers operating under the APIS program are not required to participate in the test (as it is a voluntary program) and election not to participate will not affect their APIS status.

General Test Authority

Pursuant to Title VI (entitled ''Customs Modernization '') of the North American Free Trade Agreement Implementation Act (the Act; Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993)), Customs amended its regulations, in part, to enable the Commissioner of Customs to conduct limited test programs/procedures designed to evaluate the effectiveness of new technology or operational procedures which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Section 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) allows for such general testing. (See TD 95–21 (60 FR 14211, March 16, 1995). This test is established pursuant to those regulations.

Intent of the Test Program

Customs plans to work with the air carrier community, other agencies, and other parties affected by this test program in the design, implementation, and evaluation of the test. Customs intends to use the experience gained in administering the test program to design operational procedures, automated systems, and regulations that are supportive of, and compatible with, the business environment of the air carrier industry, Customs enforcement mission, and the industry's and Customs efforts to improve international passenger processing.

Conditions of Operation

The announced test provides an alternative to the ordinary in-transit baggage processing procedure of § 122.101(a) and replaces the regulatory requirement of § 122.48(e) to file (manually or electronically) with Customs, at the port of arrival, an air cargo manifest (CF 7509) for accompanied in-transit baggage, so long as participants agree to the following test conditions of operation:

(1) The APIS component: The participant must transmit to Customs via APIS, prior to arrival of the aircraft, the information required under the terms of the APIS MOU.

(2) The participant must also submit to Customs an ''onward connector listing'' a document that identifies the arriving flight number, in-transit passenger names, their checked (in-transit) baggage tag numbers, and their ultimate foreign destination(s). The participant may provide this

information in the form of a computer generated report, screen print, or other hard copy document manually submitted to Customs prior to arrival, or by allowing Customs to electronically access its reservations database in order that Customs may extract an ''onward connector listing'' containing the required information prior to arrival of the flight.

(3) The participant must affix an in-transit international baggage tag to each piece of in-transit baggage at the foreign point of origin, as provided for under § 18.14 of the Customs Regulations (19 CFR 18.14), to visually identify the baggage for later exportation from the United States.

(4) The participant must perform staging and transferring of in-transit baggage in Customs approved security areas (except for plane-to-plane transfers approved by Customs locally).

(5) The participant must ensure that all carrier employees or contract ramp service employees with access to the in-transit baggage will have and display (or produce upon demand) approved identification issued under the Customs Regulations (19 CFR Part 122, Subpart S, entitled ''Access to Customs Security Areas'').

(6) The participant must timely deliver in-transit baggage to Customs approved secure areas and to the Federal Inspection Service (FIS) area for inspection, if and when requested.

(7) The participant must maintain direct control of the in-transit baggage until the departing carrier responsible for exporting the baggage has signed a receipt for it, which will transfer bond liability from the participant to the departing carrier.

Test participants agreeing to follow the above conditions of operation will be allowed to participate in the test. If for any reason, however, a participant's APIS or electronic reservations database system becomes inoperative, Customs is unable to receive APIS information transmitted by a participant, or access to the participant's reservations database is otherwise not available, the participant will be required to submit a paper document listing the required APIS passenger information and the in-transit baggage information prior to the arrival of the flight.

Regulatory Provisions Suspended

Section 122.48(e) of the Customs Regulations (19 CFR 122.48(e)), pertaining to the filing of an air cargo manifest for international, in-transit baggage, will be suspended during this test for test participants that provide the information required under the test's conditions of operation and otherwise meet those conditions.

Eligibility Criteria

To be eligible to participate in the program, an applicant air carrier: (1) must be an APIS participating carrier (having entered into an agreement with the Government by signing an APIS MOU) and (2) must be performing acceptably under the APIS MOU and have been so performing for a period of at least four weeks.

The Application Process

Participation in the test program is open only to APIS participating air carriers in good standing (performing under the MOU at acceptable levels). To apply for participation in the test, these APIS participating air carriers must submit a written statement to the port director with jurisdiction over the airport where the transfer of the in-transit baggage will occur within 30 days following the publication of this notice in the **Federal Register**. The statement (examples of which may be obtained from the port director) must be signed by an authorized official of the carrier. It must state that the air carrier agrees to all the conditions set forth in the ''Conditions of Operation'' section of this notice and that it wishes to voluntarily participate in the test. The statement must also designate a local point of contact and telephone number for use by Customs personnel at the port.

To apply for participation in the APIS program, a prerequisite to participation in the test program, air carriers should contact the Customs port director with jurisdiction over the airport where they intend to operate or contact Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

Revocation and Reinstatement

Customs, in its mission to interdict the flow of illegal narcotics and other contraband into the United States, places enormous reliance on APIS transmissions and in-transit baggage information. Consequently, the port director with jurisdiction over the airport where the test participant is operating may revoke a test participant's privilege to operate under the test program in certain circumstances. A participant's privilege can be revoked altogether (full revocation) or the revocation may be partial (e.g., limited to a certain flight or flights).

Full revocation may be ordered where a test participant has been suspended from operating under the APIS program. Where the loss of Blue Lane eligibility for a given flight (or flights) does not result in a participant's suspension from the APIS program, it will result in revocation of the participant's privilege to operate under the test program for that flight (or those flights) until the participant's Blue Lane eligibility status for that flight (or those flights) is restored. This is a partial revocation.

A test participant's privilege to operate under the test also can be fully or partially revoked for less than satisfactory performance of any of the conditions of operation. Also, where the port director determines that a participant's test performance is unsatisfactory in any way that may compromise the Customs enforcement mission, the privilege may be fully or partially revoked.

A participant whose privilege to operate under the test has been revoked for any reason will be required to file an air cargo manifest that lists in-transit baggage under ordinary procedures (manually or electronically), in accordance with the requirements of the Customs Regulations (19 CFR 122.48(e) and 122.101), or to have its in-transit passengers take their baggage through Customs processing as provided under § 122.101(a). If there has been a full revocation of test privileges, all covered flights will be affected. If the revocation was limited to a certain flight (or flights) or to a certain airport, only those flights or that airport will be affected.

A participant's reinstatement into the test program, after full or partial revocation of privileges, may be permitted after the participant submits to the appropriate port director a written explanation of the problems that led to the revocation of privileges and the measures taken to correct those problems. Where a full revocation was based on a test participant's suspension from APIS, reinstatement into the test program will require reinstatement into the APIS program. Where test privileges were revoked relative to a given flight, for the reason that the flight lost Blue Lane eligibility status, reinstatement into the test program for that flight will depend upon restoration of Blue Lane eligibility status for that flight. Reinstatement into the test program also may be accomplished by sufficiently improving performance or satisfactorily correcting deficiencies with respect to other test conditions when these performance factors were the reason(s) for full or partial revocation of privileges.

Test Evaluation Criteria

Customs will review all public comments received concerning any

aspect of the test program or procedures, amend procedures as necessary in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria.

The following evaluation methods and criteria have been suggested to measure the performance of test participants: (1) measuring participants' APIS data transmissions and other information submissions regarding in-transit passengers and baggage for timeliness, completeness, and accuracy, (2) tracking the number of deficiencies that occur in the delivery of in-transit baggage to Customs secure areas or, when necessary, to the FIS area, (3) tracking deficiencies in the performance of other test conditions, and (4) assessing the impact on Customs workload, including cycle time and workload shifts.

Six months after implementation of the program, evaluations of the program will be commenced. Results of the test evaluations will be available at the conclusion of the test and will be made available to the public upon request.

Dated: February 17, 2000.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–4269 Filed 2–22–00; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Wednesday,
February 23, 2000

Part II

Department of the Interior

National Park Service

Proposed National Park Service Standard Language Concession Contracts and Amended Proposed Environmental Protection Provisions; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed National Park Service Standard Language Concession Contracts and Amended Proposed Environmental Protection Provisions

AGENCY: National Park Service, Interior.

ACTION: Solicitation of public comments on exhibits to proposed NPS standard language concession contracts and amended proposed environmental protection provisions.

SUMMARY: On September 3, 1999, the National Park Service (NPS) published in the **Federal Register** for public comment a proposed new standard language concession contract. Concession contracts are the means by which NPS generally authorizes private businesses to provide services to visitors to areas of the national park system. A new standard language concession contract is needed as a result of the passage of Public Law 105–391 which established new policies and procedures for NPS concession contracts. On December 22, 1999, NPS published for public comment in the **Federal Register** proposed new short form concession contracts. This notice publishes for public comment proposed Exhibits to the proposed standard concession contracts (as applicable). In addition, this notice publishes for public comment amended portions of the proposed standard concession contract originally published for public comment on September 3, 1999. Final standard concession contracts (and final exhibits) will be published in the **Federal Register** after consideration of public comments. NPS requests public comments on these matters as a matter of policy. It is not legally required to do so.

DATES: NPS will accept written comments on the following subjects on or before March 24, 2000.

ADDRESSES: Comments should be addressed to Concession Program Manager, National park Service, 1849 ''C'' Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National park Service, 1849 ''C'' Street, NW, Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION:

A. The proposed exhibits to the standard concession contract are as follows:

Exhibit ''A'': Nondiscrimination requirements
Exhibit ''B'': Assigned Land, Real Property Improvements
Exhibit ''C'': Assigned Government Personal Property
Exhibit ''D'': Description of Existing Leasehold Surrender Interest
Exhibit ''E'': Insurance Requirements
Exhibit ''F'': Maintenance Plan
Exhibit ''G'': Operating Plan
Exhibit ''H'': Construction Project Approval Procedures
Exhibit ''X'': Pertinent Leasehold Surrender Interest provisions of 36 CFR PART 51

1. EXHIBIT ''A''—Nondiscrimination

Section I

Requirements Relating to Employment and Service to the Public

A. Employment: During the performance of this concession permit the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession permit or with any of such rules, regulations, or orders, this concession permit may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession permits in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may

direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. Construction, Repair, and Similar Contracts: The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this permit, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this permit, and for that purpose the term ''permit'' shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term ''Concessioner'' shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. Facilities: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition; (ii) discriminating by segregation or other means against any person.

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any ''*program*'' or ''*service*'' being provided to the general public be provided to the highest extent *reasonably possible* to individuals who are mobility impaired, hearing impaired, and visually impaired. It *does not* require architectural access to every building or facility, but only that the service or program can be provided *somewhere* in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

Part A

Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Part B

Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

2. EXHIBIT ''B''—Land Assigned

Land is assigned for housekeeping purposes in accordance with the boundaries shown on the following map[s]:

Real Property Improvements Assigned

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number

Description

Approved, effective _____, 20____
By _____
Regional Director, _____ Region

3. EXHIBIT ''C''—Assigned Government Personal Property

Government personal property is assigned to the concessioner for the purposes of this CONTRACT as follows:

Property Number

Description of Item

Effective, this ____ day of _____, 20 ____.
By _____
Regional Director, _____ Region

4. EXHIBIT ''D''—Leasehold Surrender Interest as of the Effective Date of this Contract

Pursuant to Section 9(c)(2), the Concessioner's leasehold surrender interest in real property improvements as of the effective date of this CONTRACT is as follows:

Building Number

Description

Value

[If there are none, this exhibit should say ''NONE''.]

Exhibit D Approved Effective _____
Concessioner
United States of America
By: _____
By: _____
Director, National Park Service

5. 5. EXHIBIT ''E''

I. Insurance Requirements

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

I. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess ''Umbrella'' Liability.

A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit $
Products/Completed Operations Limit $
Personal Injury & Advertising Injury Limit $
General Aggregate $
Fire Damage Legal Liability ''per fire'' $

2. The liability coverages may not contain the following exclusions/limitations:

a. Athletic or Sports Participants
b. Products/Completed Operations
c. Personal Injury or Advertising Injury exclusion or limitation
d. Contractual Liability limitation
e. Explosion, Collapse and Underground Property Damage exclusion
f. Total Pollution exclusion
g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of ''any auto,'' Symbol 1. (Where there are no owned autos, coverage applicable to ''hired'' and ''non-owned'' autos, ''Symbols 8 & 9,'' shall be maintained.)

Each Accident Limit $

C. Liquor Liability

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit $
Aggregate Limit $

D. Watercraft Liability (or Protection & Indemnity)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit $

E. Aircraft Liability

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit $
Property Damage Limit $
Each Accident Limit $

F. Professional Liability/Errors & Omissions Liability (Describe Specific Coverage)

Coverage will apply to damages resulting from the rendering or failure to render professional services.

Each Occurrence or Each Claim Limit $
Aggregate Limit $

G. Garage Liability

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limits—Garage Operations
Auto Only $
Other Than Auto Only $
Personal Injury & Advertising Injury Limit $
Fire Damage Legal Liability ''per fire'' $
Aggregate Limit—Garage Operations
Other Than Auto Only $

If owned vehicles are involved, Liability coverage should be applicable to ''any auto'' (''Symbol 21'') otherwise, coverage applicable to ''hired'' and ''non-owned'' autos (''Symbols 28 & 29'') should be maintained.

H. Excess Liability or Excess ''Umbrella'' Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess ''Umbrella'' Liability policy.

I. Care, Custody and Control—Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss $

J. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit $
Aggregate Limit $

K. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

L. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess ''Umbrella'' Liability, if maintained) may not exceed $5,000.

M. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

II. Property Insurance

A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit B of this CONTRACT.

2. Coverage shall apply on an ''All Risks'' or ''Special Coverage'' basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Coverage is to be provided on a blanket basis.

7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

8. Flood Coverage shall be maintained with a limit of not less than: $

9. Earthquake Coverage shall be maintained with a limit of not less than: $

10. Ordinance or Law Coverage shall be maintained with a limit of not less than $

B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities, as more specifically described in Exhibit B of this CONTRACT.

2. The policy shall provide for loss recovery on a Replacement Cost basis.

3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.

4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

5. Coverage is to be provided on a blanket basis.

6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.

7. Ordinance or Law Coverage shall be maintained with a limit of not less than $

C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an ''All Risks'' or ''Special Coverage'' basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Any occupancy restriction must be eliminated.

7. Any collapse exclusion must be eliminated.

8. Any exclusion for loss caused by faulty workmanship must be eliminated.

9. Flood Coverage shall be maintained with a limit of not less than: $

10. Earthquake Coverage shall be maintained with a limit of not less than: $

D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

E. Deductibles

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or $25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding $50,000).

2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed $25,000.

F. Required Clauses

a. *Loss Payable Clause:*

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

''In accordance with the Concession Contract/Permit No. ____ dated _____, between the United States of America and the _____ (the Concessioner) payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America.''

III. Construction Project Insurance

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

IV. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A− by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

V. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number (''AMB#''). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to receiving certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

VI. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

6. EXHIBIT ''F''

Exhibit ''F'' is a sample Maintenance Plan. A maintenance plan attached to an NPS concession contract delineates, consistent with the terms of the main body of the concession contract, the maintenance responsibilities of the Concessioner and NPS. There is no prescribed ''standard'' NPS maintenance plan. An appropriate maintenance plan is to be developed by NPS for each

particular concession contract. The following proposed sample maintenance plan, subject to any changes that may be made after consideration of public comments, will be included for informational purposes only as Exhibit ''F'' of standard language concession contracts (where applicable). There is no requirement that any actual Exhibit ''F'' to a concession contract adhere to the sample set forth below except for the introductory paragraph. Each actual maintenance plan will be developed to meet the needs and mandates of the individual park area and concession operations. Some sections included in this sample plan will not apply to all concessioners, *e.g.,* where the concessioner provides no employee housing or is not affected by snow removal issues. Additional sections, *e.g.,* hurricane preparedness, may be included in actual maintenance plans.

(SAMPLE) MAINTENANCE PLAN

Park Unit Name

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I. Introduction

This Maintenance Plan between _____ (hereinafter referred to as the ''Concessioner'') and (Park Unit Name), National Park Service (hereinafter referred to as the ''Service'') shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the ''CONTRACT''). It sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within (Park Unit Name) which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of (Park Unit Name). Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT.

[From this point on, this document shall be tailored to the requirements of each individual park.]

II. Maintenance of Concessioner Facilities

The Concessioner is required by the terms of the CONTRACT to maintain the facilities used in a manner that is considered satisfactory by the National Park Service. It is the purpose of this Maintenance Plan to help define the necessary maintenance requirements and to define the maintenance relationship between the Concessioner and the National Park Service. Both the Concessioner and the Service have specific responsibilities as outlined in the CONTRACT and this document.

III. Terms Used in this Agreement

''*Concession Facilities*'': As defined in the Concession CONTRACT.

''*Assigned Areas*'': Assigned areas are lands within (Park Unit Name), as defined by Land Assignment Maps in Exhibit ''B'' to the CONTRACT. These lands contain improvements and support facilities used by the Concessioner. The Concessioner has specific responsibilities, defined below, regarding the condition of these lands, together with the facilities, improvements and landscapes on them.

Land Assignment Maps may also contain comments addressing maintenance responsibilities specific to an area.

''*Exterior*'': Exterior refers to structures, foundations, exterior walls and surfaces, roofs, porches, stairways, and other structural attachments. This includes all equipment, walkways, trails, parking lots, and other improvements, as well as the lands, landscapes, and utilities within the assigned area of responsibility.

''*Interior*'': Interior refers to the area of structures inside the external walls and under the roof, including doors and window frames. This also includes all equipment, appurtenances, improvements, and utility systems that penetrate the walls, roof, or foundation.

''*Maintenance*'': The preservation and upkeep of real or personal property in as nearly as is practicable to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair and rehabilitation of designated areas, facilities, infrastructure, equipment, and their component parts—up to and including replacement if necessary—to provide a safe, sanitary and aesthetically pleasing environment for park visitors and employees.

''*Operations*'': Operations refers to all aspects of activity by the Concessioner authorized under the concession CONTRACT. Operations include all services provided to the public and all non-public actions necessary to support those authorized services.

''*Repair*'': Repair is defined as the act of correcting an unsatisfactory physical condition. Replacement is an aspect of repair and may be a necessary and/or an economically sound approach to repairs. Repair is an aspect of maintenance, and the objective of repair is the same as the objective of the general act of maintenance as defined above.

IV. Annual Maintenance Inspections

The Service and Concessioner shall conduct an annual joint inspection/review of Concessioner Facilities assigned to the Concessioner to determine what maintenance work is necessary, and if the facilities comply with applicable state and federal laws, regulations, guidelines, rules, codes, and policies. This review shall take place on a schedule to be established by the Service in consultation with the Concessioner.

Based upon the annual review, deficiencies noted on periodic evaluations (see Operating Plan), and needs identified by concessioner staff, the Concessioner shall prepare a list of maintenance needs and an annual maintenance program proposal to submit for Service approval by December 1 of each year. This program will list specific projects and the manner by which the Concessioner intends to execute its maintenance responsibilities during the following year.

V. Concessioner's Responsibilities

The following sections identify the responsibilities of the Concessioner.

A. Facilities Assigned to the Concessioner

The Concessioner shall maintain and repair all Concession Facilities assigned to the Concessioner except as noted under ''Service Responsibilities.''

The Concessioner's maintenance responsibilities include, but are not limited to:

- Lands, landscaping, and drainage structures;
- All improvements resting on the lands (buildings, walkways, trails,

parking areas, pavement markings, fences, curbing, culverts, etc.);

• Underground storage tanks and associated mitigation if needed;

• Intrusion and fire alarm systems; interior and exterior lighting systems;

• Fire suppression systems;

• Utility and utility distribution systems;

• Structural elements and surfaces (roofing, flooring, windows, doors, porches, etc. including hazard abatement);

• Heating and cooling systems;

• All installed fixtures and miscellaneous equipment.

The Concessioner will carry out general preventative and cyclic maintenance and emergency repair in a timely manner to ensure that all Improvements assigned to the Concessioner achieve the basic goals described by the Concessioner Review Program and applicable codes and guidelines. Maintenance will be carried out as follows:

1. *Codes:* The Concessioner shall comply with all applicable federal, state, and local codes, including but not limited to, the Uniform Building Code, Uniform Federal Accessibility Standards, the Uniform Plumbing Code, the National Electric Code, and the National Fire Protection Association's (NFPA) Life Safety Codes; unless a written exception has been provided by the Superintendent.

2. *Painting:* To maintain the appearance of the structures, exterior painting shall be performed on a seven year cyclic basis or more often if needed to provide adequate protection to the structure. Interior painting shall be performed on a five year cyclic schedule or more often if needed to maintain a good appearance. The Service must provide advance written approval for lengthening intervals or change of paint color.

3. *Interior Systems:* The Concessioner shall operate, repair, and replace lighting, heating, and cooling systems. The Concessioner shall clean and inspect all chimneys, fireplaces, stoves, and exhaust ducts prior to each operating season. The concessioner shall also provide and install any needed winterization covers for chimneys.

4. *Utility Systems:* The Concessioner shall operate, repair, and replace all interior and exterior utility systems within Concessioner land assignments as described on Land Assignment Maps.

5. *Food Service Equipment:* All equipment used in food service operations, including but not limited to dishwashers, refrigerators, freezers, and serving tables, will comply with safety, public health, and sanitation codes.

6. *Safety Equipment:* The Concessioner will provide and maintain safety devices, fire detection and suppression equipment, and such additional appurtenances as are necessary for the protection of the employees and the public, as well as assigned Concessioner Facilities, by complying with all applicable county, state, and federal codes.

7. *Fire Equipment:* The Concessioner is responsible for all hose boxes, fire hose, standpipes, and extinguishers within its assigned area of responsibility, and shall inspect the equipment on a regular basis to ensure proper working order and compliance with the NFPA Life Safety Code.

8. *Roof Replacement:* As roof materials are replaced, type A materials will be used to maximize the fire protection provided to structures assigned to the Concessioner.

9. *Historic Structures:* (Historic Items) Certain Concessioner Facilities are listed on, or may be nominated to, the National Register of Historic Places and the NPS List of Classified Structures (LCS).

The Concessioner shall submit plans for all proposed work or actions affecting these resources to the Service to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. This applies to any undertaking that may affect an historic structure, historic district, cultural landscape, archeological site, or historic object or furnishing. The Concessioner must document proposed actions using the ''XXX Form'' which is available from the park. Service representatives will provide guidance to the Concessioner on the preparation of the form if requested. The proposed project may be reviewed by the Service cultural resources staff at the park and regional level, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. Service approval is required prior to undertaking the proposed action.

10. *Winter Closures:* The Concessioner shall provide winter bracing in unoccupied buildings as needed to avoid damage to structures. The Concessioner shall install shutters on all windows that are susceptible to snow damage. Shutters shall be neatly made and fitted and shall match the color of the structure to which they are affixed. Shutters for the windows and doors of historic structures shall be installed in a manner approved by the Service.

The Concessioner shall remove snow from roofs when snow accumulations threaten to injure persons or damage buildings. The Concessioner assumes sole responsibility for actions needed to correct damage that results from inadequate preventative measures.

11. *Concessioner Housing:* The Concessioner will carry out general maintenance and repair of employee housing structures on a timely basis to ensure that employee housing are well maintained. The Concessioner will inspect and clean heating on a cyclic basis and prior to initial occupancy. The Concessioner shall monitor employee housing for compliance with fire, health and safety codes and Service policies and guidelines.

B. Signs

The Concessioner will install, maintain, and replace all interior and exterior signs relating to its operations and services within the assigned areas and directional signs outside assigned areas that relate specifically to concession operations. Examples include identifying location of facilities, operating services and hours, and the Concessioner's rules or policies.

The Concessioner shall ensure its signs are compatible with Service sign standards. Sign size, style, color, and location shall be submitted for Service approval prior to installation. No handwritten signs shall be permitted within the Concessioner's area of responsibility except on a short-term, interim basis.

The Service may install signs within the areas assigned to the Concessioner.

C. Snow Removal

The Concessioner shall clear ice and snow, and sand all walkways, roadways, and parking areas within its assignment zones, as necessary to make access reasonably safe for the visiting public, Concessioner employees, Service emergency operations, and Concessioner maintenance and support operations. The use of chemical or foreign material de-icers must be pre-approved by the Service.

D. Litter and Garbage

The Concessioner shall provide an effective system for the collection and disposal of garbage and trash within its areas of responsibility. The concessioner may engage an independent contractor for this activity. The Concessioner shall keep its assigned areas free of litter, debris, garbage, and abandoned equipment, vehicles, furniture, or fixtures. Refuse shall be stored in receptacles that are covered, waterproof, and bear-and vermin-proof.

These containers will be kept clean, well maintained, and serviceable; sites

will be free of spills, waste, and odors. To prevent pest attraction and breeding, all wet garbage from concession operations will be adequately bagged and tied or stored in sealed containers. Waste must not accumulate in trash containers to the point of overflowing. Trash containers shall be conveniently located and in sufficient quantity to handle the needs of the area. The Concessioner will place cigarette receptacles at heavy use locations within assigned areas.

In areas where trash/garbage pickup noise may disturb guests, the contractor is restricted to pick-ups between 8:00 a.m. and 5:00 p.m.

Trash and garbage containers should be painted light brown or tan to distinguish between Service receptacles which are dark brown. Paint color should be approved by the Service prior to application.

All materials generated as solid waste must be removed from parks at the Concessioner's expense and disposed of in an appropriate manner in an approved site. Applicable state and/or county codes shall also be followed.

E. Grounds and Landscaping

The Concessioner shall prepare a written landscaping plan for each land assignment area and submit it to the Service for approval. The plan will include general statements regarding the desired regime (manicured, natural, etc.) and condition of the area and sub areas, as appropriate. It should include specific information including locations and scope of work proposed, safety and resource considerations, debris disposal, and proposed use of irrigation systems. The appropriate use of native vegetation, need for revegetation/restoration efforts, and the potential existence of cultural landscapes should be considered during this planning phase.

The Concessioner shall ensure proper drainage control to protect landscapes, native vegetation, structures, facilities, improvements, and equipment while maintaining natural drainage patterns to the greatest extent possible.

The Concessioner will remove trees within the Concessioner's assigned areas that have been identified by the Service as hazardous. Such trees and other trees requiring removal will be approved for removal in advance by the Superintendent by means of a written authorization that shall serve as a removal permit.

In cases where grounds and landscaping activities require temporary modification or relocation of structures assigned to the Concessioner, the Concessioner shall carry out the temporary modification or relocations at its expense.

The Concessioner will remove accumulated debris. The Concessioner should use creative methods of recycling natural debris, such as chipping woody materials for use as compost, dust control, and/or resource mitigation material. The Concessioner will remove slash buildup around buildings in its assigned area to reduce fire hazard.

As facilities are removed or sites become heavily impacted by construction activities or overuse, the Concessioner shall prepare and implement a site restoration component for its landscaping plan. The park's Resources Management Division will provide advice and assistance during the preparation of these plans. Written approval from the Service is required prior to plan implementation.

F. Roads, Trails, Parking Areas, and Walkways

The Concessioner shall maintain roads, parking areas, curbing, sidewalks, walkways, and trails within its assigned lands in a state of good repair and in a manner, which provides reasonable access to the general public, persons with physical disabilities, and emergency/service vehicles. In all assigned areas, the Concessioner shall sweep, sign, and paint curbs and striping surfaces on a recurring schedule to ensure that public areas are consistently clean and free of litter and earthen debris and are well marked. Striping plans must have written approval from the Service prior to implementation.

The Concessioner will control dust within the Concessioner's land assignment and dust which results from Concessioner use outside the Concessioner's land assignment.

The Concessioner shall develop an exterior lighting system plan, which addresses installation and maintenance of directed lighting systems that provide the minimum necessary lighting for night-time walking in assigned walkway areas. This lighting system plan shall be submitted to the Service for approval.

The Concessioner shall maintain trails assigned for its use.

G. Firewood

The Concessioner shall acquire fully-cured firewood from outside the park for use in assigned facilities. The Service encourages the use of lower emission composite fuels when and wherever possible.

To minimize hazards associated with fuel wood storage, the Concessioner will store wood away from existing structures and will comply with instructions provided by the Service's fire management staff.

H. Utilities

Utility systems will not be extended or altered without prior written approval of the Superintendent. This does not include routine or minor maintenance such as replacement of system components with like kind.

1. *Electrical:* The Concessioner shall maintain all electrical lines and equipment (conduit, fuses, panels, switches, transformers, lines, etc.) down line from the meter within all Concessioner land assignments and all fixtures (lamps, cords, and equipment) affixed to the secondary electrical lines.

The Concessioner shall repair or replace any electrical system damage within assigned areas and damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment.

The Concessioner will ensure that all electrical circuits under its control meet or exceed the standards of the National Electric Code.

2. *L.P. Gas Systems:* The Concessioner shall repair and maintain, according to NFPA codes, all L.P. gas systems in its assigned areas. This includes, but is not limited to, tanks, bottles, regulators, and piping.

The Concessioner will conduct and document, semi-annual inspections of its gas storage and distribution systems.

Placement of new or additional tanks must receive prior written Service approval. All gas installations must be inspected by an independent inspector at the Concessioner's expense.

3. *Water:* The Concessioner shall repair and maintain water service and building plumbing systems down flow from the meter within the Concessioner land assignments or as shown and/or described on Land Assignment Maps. The Concessioner shall repair or replace any damaged portions of the water system within assigned areas and damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment. The Concessioner shall also maintain all fixtures attached to the water system within all buildings and structures.

The Concessioner shall implement water conservation measures as needs arise. As replacement of fixtures is needed, the Concessioner shall obtain and install low-flow and water conserving fixtures.

The Concessioner shall implement a cross-connection control program in accordance with the most current version of the (Park Unit Name) Water System Cross-Connection Control Regulations.

The Concessioner will provide for the daily monitoring and periodic sampling of water systems at its camps.

4. *Sewage:* The Concessioner shall repair and maintain all sewage lines, connections, disposal systems, and appurtenances within the Concessioner land assignment to the sewer collection main or as shown and/or described on Land Assignment Maps. The Concessioner shall repair or replace any damage to the sewage disposal system within assigned areas and damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment.

The Concessioner shall maintain, repair, and replace fixtures attached to the sewage disposal system (including sinks, toilets, urinals, and dish washing equipment).

The Concessioner shall install and maintain grease traps as necessary to assure that grease does not flow into wastewater systems. The Service will bill the Concessioner to recoup costs for clearing or replacing clogged sewer lines and cleaning lift station wet wells due to heavy grease accumulation when directly related to the Concessioner's operations.

The Concessioner shall provide chemical toilets at designated areas associated with their operations, e.g., golf courses, stables, and raft takeout. The Concessioner will also provide for the proper operation and maintenance of composting toilets associated with its operations.

5. *Telephone Service:* The Concessioner shall contract directly with commercial telephone operators for phone service to its assigned facilities. Agreements with commercial providers shall be in accordance with guidelines provided by the National Park Service. The Concessioner shall be responsible for all on premise equipment and wiring.

6. *Seasonal Operations:* The Concessioner will drain all water and sewer lines that are defined above as the responsibility of the Concessioner and take all necessary steps to prevent damage from freezing.

The Concessioner will charge and test all water and sewer lines for leaks prior to opening.

The Concessioner shall comply with the Service's annual guidelines when reopening and repairing drinking water distribution systems.

7. *Fuel Storage Tanks and Pumps:* The Concessioner shall maintain in a serviceable condition all fuel dispensing equipment (including nozzles, regulators, shut-offs, pumps, pump housing and related appurtenances). The Concessioner shall also be responsible for installation, maintenance or replacement of fuel storage tanks and underground pumps, pipes, etc. to the dispensing apparatus, and shall be responsible from the installation and maintenance of protection barriers to protect the dispensing equipment. All maintenance, repairs, remodeling, upgrading and fuel spill mitigation shall be consistent with applicable Federal, state and local regulations and codes. The Concessioner shall notify the park's Communication Center immediately upon the event of a hazardous material or fuel spill.

VI. Service Responsibilities

During the execution of any Service responsibilities indicated below, should the Service disrupt areas or lands within the Concessioner's assigned lands, the Service shall provide mitigative signing, barriers, and revegetative efforts as are needed.

The Service will interface with the Concessioner's maintenance program by executing the following responsibilities. All obligations of the Service are subject to the availability of appropriated funds.

A. Facilities Assigned to the Concessioner

The Service will not maintain Concession Facilities assigned to the Concessioner. The Service will provide staff review of Concessioner plans and proposals, inspection and evaluation of Concessioner processes and programs, and technical advice and assistance when requested and as resources allow.

B. Signs

The Service will install, maintain, and replace all regulatory signs. The Service will provide direction and assistance to the Concessioner during the design and installation of all approved signing.

If requested, and subject to the availability of resources, the Service may on a reimbursable basis construct, maintain, and/or install signs for which the Concessioner is responsible. All requests for such service must be approved by the Chief, Facility Management, or his/her designated representative.

C. Snow Removal

(This paragraph should mesh with the Concessioner snow paragraph. Also, if snow removal is being provided to the Concessioner by NPS, provisions must be made as to price and availability.)

The Service will hold (usually in the fall) an annual meeting to develop a snow removal plan and priority schedule for Service plowing operations; a representative of the Concessioner may attend.

D. Litter and Garbage

(This paragraph should be aligned with the related concessioner paragraph.)

If requested and subject to the availability of funds, the Service may on a reimbursable basis provide garbage pick-up and disposal, bear-proof dumpsters, and maintenance and repair of those dumpsters within the Concessioner's assigned areas. All requests for such service must be approved by the Chief, Facility Management or his/her designated representative.

The Service will provide direction and guidance to the Concessioner regarding procedures and methods for keeping Concessioner refuse away from Park wildlife.

E. Grounds and Landscaping

The Service will identify and periodically monitor hazardous trees in the Park. The Service will review the Concessioner's Landscaping Plans, provide standards as needed, review and approve (if appropriate) proposed work, and monitor Concessioner projects.

The Service may make available to the Concessioner, when no cost to the Service is incurred, designated sites where limbs and other legally burnable forest debris may be transported for disposal.

F. Roads, Trails, Parking Areas, and Walkways

The Service will be responsible for appropriate maintenance of all roads, parking areas, curbing, sidewalks, walkways, and trails in the Park, except those within the Concessioner's area of responsibility as shown on the Land Assignment Maps. The Service will review the Concessioner's maintenance plans, provide standards as needed, review and approve proposed work where appropriate, and monitor Concessioner projects. Use of assigned trails by the Concessioner is subject to specific terms and conditions as may be developed by the Superintendent for mitigation of impacts by the Concessioner resulting from the Concessioner use.

G. Integrated Pest Management

The control of pests by chemical and other means is subject to park approval. Procedures are outlined in the Park's Integrated Pest Management Plan. Specific problems can be referred to the park's Integrated Pest Management Coordinator.

H. Utilities

1. *Electrical:* Where currently provided or where duplicate efforts exist, the Service will offer electrical service to the Concessioner at rates established by the Service. The Service will allow commercial electrical service to be available at all locations assigned to the Concessioner where the provision of electrical service is indicated in General Management Planning documents.

2. *Water:* The Service shall supply potable water to all Concession assigned areas to the extent possible using existing water systems at rates to be established by the Service. The Service will charge a fee to be determined annually.

The Service will provide bacteriological monitoring and chemical analysis of potable water as required by applicable law or policy. In the case of the required water monitoring by the Concessioner, the Service will provide training and review the Concessioner's daily monitoring procedures. The Service will also process water samples taken by the Concessioner at its monitored areas.

The Service will furnish water service, connections, meters, and shut-off valves. All piping and appurtenances down flow from the meter or as shown and/or described on Land Assignment Maps shall be the responsibility of the Concessioner to operate, repair, and maintain.

3. *Sewage:* The Service shall provide waste water treatment and collection services to all Concession assigned areas or as described and/or marked on Land Assignment Maps. The Service will charge a fee to be determined annually.

The Service shall assume responsibility for waste water collection at the sewer main where major points of collection occur and operate and maintain lift stations and wastewater treatment facilities including the pumping of sealed vaults within lands assigned to the Concessioner.

The Service will provide advice and technical expertise, as available, to the Concessioner regarding the operation and the maintenance of composting toilets.

National Park Service

_____
Superintendent
Date: _____

6. EXHIBIT "G"

Exhibit "G" is a sample Operating Plan. An operating plan attached to an NPS concession contract describes specific operational responsibilities of the Concessioner and NPS. There is no prescribed "standard" NPS operating plan (except for the introductory paragraph of this sample plan). An appropriate operating plan is to be developed by NPS for each particular concession contract. The following proposed sample operating plan, subject to any changes that may be made after consideration of public comments, will be included for informational purposes only as Exhibit "G" of standard language concession contracts (where applicable). There is no requirement that any actual operating plan follow this sample except for its introductory paragraph. Each actual operating plan will be developed to meet the needs and mandates of the individual park area and concession operations. Some sections included in this sample plan will not apply to all concession contracts, *e.g.*, where the concessioner provides no lodging or food service. Appropriate additional sections may be included in actual operating plans.

(Sample) Operating Plan

Park Unit Name

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I. Introduction

This Operating Plan between _____ (hereinafter referred to as the "Concessioner") and (Park Unit Name) (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within (Park Unit Name) which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of (Park Unit Name).

Any revisions shall be consistent with the main body of this CONTRACT.

[From this point on, this document needs to be tailored to the requirements of each individual park.]

II. Management, Organization and Responsibilities

A. Concessioner

1. The Concessioner will direct this concession operation. The Concessioner shall employ an on-site manager, who carries out the policies and directives of the Service as well as those of the Concessioner in the operation of the authorized concessions facilities and services in (Park Unit Name). To achieve an effective working relationship between the Concessioner and the Service, the Concessioner shall designate one representative who has full authority to act as a liaison in all concession matters within (Park Unit Name).

2. The on-site manager will employ a staff with the expertise to operate all services authorized under the concession CONTRACT.

3. The on-site manager will furnish the Service with an initial list identifying key concession management and supervisory personnel and their job titles, with updates as changes occur.

B. Area

1. The Superintendent manages the total park operation, including concession operations. The Superintendent carries out the policies and directives of the Service, including oversight of concession contracts. Through staff representatives, the Superintendent reviews, supervises, and coordinates concession activities within (Park Unit Name).

Monitoring concession contract compliance includes evaluating all concession operations and services, and reviewing and authorizing all rates, improvements to facilities, and construction.

2. The Assistant Superintendent supervises and manages the functions of all divisions, as they relate to the overall park operation. This position has delegated authority and assists the Superintendent by making recommendations on all aspects of park management and serves as Acting Superintendent during the absence of the Superintendent.

3. The Management Assistant is responsible for coordinating planning and development activities, overseeing environmental compliance, and supervising the concession management activities within the park.

4. The Concessions Management Division coordinates the functions of other Service divisions relating to concession operations. The Chief makes recommendations on all aspects of the concessioner's operation to the Superintendent. He/she ensures that necessary evaluations and inspections are performed, including those required by the United States Public Health Service (USPHS), Park Safety Officer (including fire inspections), along with periodic evaluations required under the NPS Concessioner Review Program. The Chief ensures all concessioner rates are approved based upon current comparability studies or applicable guidelines. He/she has authority from the Superintendent to make field decisions pertaining to the concessions operation, and acts as liaison between the Concessioner and Superintendent.

Concessions Management Specialist(s) review and coordinate the Concessioner's day-to-day activities; operational and maintenance activities; rate, service, and schedule changes; equal employment opportunity and affirmative action plans; advertisements; construction proposals; annual financial reports; insurance coverage; and any other contract requirements.

5. The Park Safety Officer monitors the Concessioner's Loss Control program to ensure it meets all applicable standards.

6. The Park Sanitarian monitors food and beverage services, grocery stores, solid waste disposal, water, and waste water systems to ensure adherence to all applicable public health standards.

7. The Chief Ranger initiates, reviews, supervises, and coordinates the activities of personnel who provide visitor services and protection functions. District and Subdistrict Rangers, the Fire Management Officer, and the Chief Law Enforcement Specialist serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, safety, prescribed fire, search and rescue, emergency medical services and resource protection. District and subdistrict rangers may assist with concession operational evaluations, PHS evaluations and critical item follow-up inspections.

8. The Chief of Interpretation acts on behalf of the Superintendent in matters pertaining to interpretation, environmental education, museum services, and public information. The Interpretive Division will work with the Concessions Management Division to evaluate/monitor concession interpretive activities.

a. District Interpreters provide interpretive programs for the visiting public and serve as the direct line of communication to the Concessioner about interpretive matters, including concession staff training.

b. The Public Information Officer coordinates media relations and activities directly with the Concessioner. This office also prepares the Parks' newspaper, the Sequoia Bark.

c. The Parks Cultural Resources Specialist serves as the direct line of communication to the Concessioner about the care, treatment, and preservation of the historic structures assigned to the Concessioner.

9. The Chief of Maintenance acts on behalf of the Superintendent in matters pertaining to maintenance and supervises the activities of Facility Managers, the Park Sanitarian, and Park Communications Center.

a. The Facility Managers, District Maintenance Supervisors and their staff provide day-to-day supervision of all maintenance activities and operations, including utilities, in their districts. They serve as the direct line of communications to the Concessioner on routine maintenance matters.

b. The Exhibits Specialist provides technical advice and assistance to the Concessioner on all matters concerning maintenance to historic structures.

10. The Chief of Resources Management acts on behalf of the Superintendent in all matters pertaining to natural resources management such as air quality monitoring, vegetation management, fish and wildlife management, and hazard tree mitigation.

11. The Administrative Officer acts on behalf of the Superintendent in matters related to fiscal management associated with the concession activities, including billing for payment of franchise fees, utilities, lease fees, quarters rental, and personal services provided by the Service to the Concessioner.

III. Concession Operations

A. Operational Evaluations

1. The Service and the Concessioner shall inspect and monitor concession facilities and services. The Service will evaluate all services and facilities operated by the Concessioner to ensure public safety and health, identify maintenance and operating deficiencies, and ensure satisfactory services and accommodations for the general public within assigned areas of responsibility .

2. The Superintendent's representative(s), normally the Concessions Management Specialists, will conduct periodic inspections of concessioner facilities and services to ensure conformance to operational standards established by the Concessioner Review Program. Location managers will be contacted at the time of evaluations so that a representative of the Concessioner can accompany the Service evaluator.

3. The Park's Safety Officer will conduct at least one annual

comprehensive safety and occupational health evaluation.

4. The Park Sanitarian shall conduct periodic food service evaluations; inspections may be conducted without prior notice. The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The Service will help develop and update the program as necessary.

5. The Concessioner is responsible for developing and following a comprehensive safety program. The service will make unannounced inspections and evaluations of the safety program on a random basis.

6. The Concessioner will perform annual interior and exterior fire and safety inspections of all concession buildings. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Service upon request.

7. The Service reserves the right, in accordance with the Concession CONTRACT, to enter the Concessioner's facilities at any reasonable time for inspections or when otherwise deemed necessary.

8. The Concessioner must be responsive to dates assigned for correction of deficiencies and abatement plans for correction of identified deficiencies. The Concessioner will meet with Service officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections.

B. Rates

The Concessioner shall provide its visitor services at rates approved by NPS.

C. Schedule of Operation

The Concessioner will provide authorized services for (Park Unit Name) visitors on a year-round basis; some facilities close seasonally or provide limited services. The Concessioner will annually submit a written schedule of proposed opening and closing dates and operating hours for all concession facilities for the Superintendent's approval prior to implementation. The Service will give reasonable notice of any schedule changes that it may initiate. Weather and visitation may cause specific dates of operating seasons to fluctuate; these dates, however, will be agreed upon and approved by the Service.

D. Staffing and Employment

1. *Concessioner Hiring:*

a. The Concessioner will hire a sufficient number of employees to ensure satisfactory services during shoulder as well as peak visitor seasons.

b. The Concessioner will attempt to offer its employees a full workweek whenever possible. Prior to employment, the Concessioner will inform employees of the possibility that less-than-full-time employment may occur during slow periods.

c. The Concessioner will establish hiring policies that include appropriate background reviews of applicants for employment. The Concessioner will establish employment standards to ensure that guest safety and security is maintained and that sensitive positions, such as those with access to guest room keys, are identified.

d. Drivers of delivery trucks or passenger carrying vehicles shall have a valid operator's license for the size and class of vehicle being driven. They shall also meet any additional State requirements established for the vehicle driven or passengers carried.

2. *Employee/Staffing Practices:*

a. All employees dealing with the public shall wear uniforms or standardized clothing with personal nametag. Employees will project a hospitable, friendly, helpful, positive attitude, be capable of and willing to answer visitors' questions, and provide visitor assistance. The Concessioner shall take appropriate steps to enforce these rules.

b. The Concessioner shall have an affirmative action plan, as required by law, and shall post the plan in the office and work area.

3. *Service Employees and Families:*

The Concessioner shall not employ in any status a Service employee, his/her spouse, or minor children of Service employees without the Superintendent's approval. Service employees must submit a written request for approval to the Superintendent. The Concessioner shall not employ in any status the spouse or children of the Superintendent, Assistant Superintendent, Chief of Concessions Management, Concessions Management Specialists, Safety Officer, or Public Health Sanitarian.

4. *Training Program:*

a. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements that affect their employment and activities while residing and working in (Park Unit Name). A Service representative may participate in scheduled orientation sessions.

b. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public.

c. The Service will provide orientation(s) to the Concessioner Review Program and other NPS Concession Programs, emphasizing the operational review program, to managers on an annual basis.

d. The Concessioner will provide hospitality training for employees who have direct visitor contact and/or who provide visitor information.

e. The Concessioner will design and provide interpretive training for all employees who provide interpretive and/or informational services. The Service will work closely with the Concessioner to refine the methods of preparing and conducting effective interpretive programs. The Service will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship of interpretive presentations to primary parkwide interpretive themes.

IV. Scope and Quality of Service

Note to preparer: This section of the sample operating plan includes only a portion of the potential services that a concessioner might provide. Some of these sample sections may not apply to one concessioner. Other services for which sections might be developed include, for example:

- Horse operations
- Guided ski touring, hiking or technical climbing
- Sleigh rides
- Wagon rides
- Bus tours
- Cookouts
- Snowmobile operations
- Pack trips
- Hunting guide services
- Canoe or kayak livery
- Etc.

All vehicular equipment used by the Concessioner will be properly licensed and maintained in a safe operating condition. Federal and state requirements must be adhered to. The Concessioner will park such equipment, when not in use, in an orderly fashion in an area approved by the Service.

A. Overnight Accommodations

1. *General*: Total pillow count will not exceed the pillow limitation set forth in the General Management Plan and applicable development concept plans for this park area.

The Concessioner will provide clean, well maintained overnight accommodations. Furnishings, bedspreads, pictures, draperies, etc. will retain a national park theme, with sensitivity to the history and resources of the park area. The Concessioner and Service will coordinate improvements to rooms and furnishings. The Concessioner must have prior written approval from the Superintendent

before implementation of any new improvements.

2. *Television*: Television will not be included as a part of furnishings in designated park lodging rooms.

3. *Telephone Services*: Telephone services shall provide public access to long distance services in accordance with ''The Telephone Operator Consumer Service Act.'' Charges to guests will not exceed the FCC approved AT&T tariff time-of-day and day-of-week, public switched-message rates.

4. *Lodging Reservations/Deposits/Refunds*:

a. The Concessioner will adequately staff the Reservations Office to meet the need during peak periods.

b. The Concessioner will accept reservations up to one year and one day in advance. A deposit may be required to hold a reservation. The deposit requirement and refund policy is part of the rate approval process. Any deposit may be paid by cash, check, money order, or major credit cards, including the type of credit cards issued to government employees.

c. If cancellation is made 72 or more hours in advance of reservation, the deposit will be refunded in full. If the cancellation is made less than 72 hours in advance, the deposit is forfeited unless the rooms are filled. Rates confirmed by the Concessioner shall be honored at the time of stay. Refunds will be processed within one month of cancellation.

5. *Conventions, Group Meetings, and Special Events*:

a. The Concessioner shall limit convention and group meeting use of its facilities to the off-season period(s) and then only to fill accommodations which would otherwise be vacant. Facilities may not be set aside for exclusive use by special groups if they will interfere with the general public's use and enjoyment of the area or facility.

b. Where occupancies are low, the Concessioner is encouraged to schedule special events that relate closely to park themes.

B. Food and Beverage Service

1. All menus will maintain a price range that accommodates the general range of park visitors.

2. The Concessioner will offer a range of food service providing for a wide variety of visitors, i.e., deli, fast food operation, cafeteria, and full service restaurants in the lodging facilities. Food service operations will offer variety at each location, including vegetarian entrees, light eater's portions, and children's menus. Taken all together, price ranges will accommodate the general range of Park visitors.

C. Alcoholic Beverage Sales

1. The Concessioner will comply with applicable State laws and regulations, which will be enforced by the Service.

2. Alcoholic beverage service will be available to the public with meal service (bona fide eating place) and at designated lounges. Alcoholic beverage sales will be available to the public at specific merchandising outlets. No promotional activities will center on alcoholic beverages (i.e., happy hours, two-for-one sales, etc.)

D. Merchandising

1. *General:* Guidelines regarding merchandise sales operations are included in the Concession CONTRACT.

2. *Gifts and Souvenirs:* A ''Gift Mission Statement'' for (Park Unit Name) is provided as Attachment 1 to this Operating Plan. The Gift Mission Statement connects primary parkwide interpretive themes with gifts and souvenirs chosen for sale in park gift shops.

In (Park Unit Name), gift and souvenir sales will conform to Gift Mission Statement including the following guidelines:

a. A broad range of gifts and souvenirs will provide visitors with opportunities to buy inexpensive as well as fine art items.

b. Handicraft items representing park and regional themes, including crafts by local and Indian artists, will be actively sought and prominently displayed.

c. Gift shops will offer items having a direct relationship to (Park Unit Name), its environs, its history, or other related environmental or cultural topics. This will provide visitors with opportunities to buy memorabilia of their park visit while at the same time obtaining information or educational messages related to the park's resources. Where possible and appropriate, informative tags will be attached to the sales item to show their relationship to park themes. Items of park interpretive value and general value in environmental and cultural education will be prominently displayed.

d. Gifts and souvenir items which are commonly found outside the park and which do not relate to identified primary parkwide interpretive themes will not be restocked. Existing stocks may be sold until depleted.

3. *Sporting Goods and Clothing:* The Concessioner shall carry a selection of clothing and sporting goods to meet the needs of visitors who may have forgotten items or need emergency replacements. The intent of this visitor service is to provide a narrow selection of items which nonetheless represents a range of price and quality levels.

4. *Firewood:* The Concessioner shall acquire fully-cured firewood from outside the park for sale in its facilities. The Service encourages the use of lower emission composite fuels when and wherever possible.

E. Interpretive Services

1. *General:* The Concessioner shall submit to the Service a written plan for its interpretive program which outlines, for both non-personal and personal services, a basic description of topics to be covered, bibliography of resource materials being used, and the scope of employee training.

2. *Guided Bus Tours:*

a. The Concessioner will provide guided bus tours using vehicles provided by the Concessioner.

b. The Concessioner will provide a sufficient number of trained, courteous drivers and support staff to meet the operating schedule. Personnel will wear appropriate uniforms.

c. The Concessioner will adequately train staff members in safe operating procedures and interpretive techniques. The Concessioner will provide and be evaluated upon thematic interpretation. Employees will demonstrate their knowledge of (Park Unit Name), Service goals, and appropriate interpretive techniques in their programs.

3. *Non-Personal Interpretive Services:*

a. In addition to personal interpretation, the Concessioner will actively pursue a non-personal interpretive program. At food service facilities, interpretive messages will be included on menus, placentas, paper cups, tent-cards, etc. The Concessioner will explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals.

b. Primary parkwide interpretive themes will carry over to merchandise sold in retail outlets.

4. *Interpretive Assistance:* The Division of Interpretation is available to advise/assist the Concessioner in the development of an interpretive program which encompasses all of these efforts.

F. Ski Touring Operations

1. Equipment will comply with standards expressed by the American Standard Testing and Materials (ASTM); employees will receive proper training to work with equipment according to the manufacturer's specifications and ASTM.

2. Snowshoe and Nordic ski equipment rentals will be available when snow conditions permit. The Concessioner shall maintain an adequate supply of quality rental equipment in a wide variety of sizes to meet visitor needs. Staff shall possess the expertise needed to properly fit the equipment to the visitor's needs and abilities.

3. Ski Trail Grooming: The Concessioner is authorized to groom loop trails using mechanical grooming equipment. Machine grooming will not occur until average snow depth exceeds 24 inches. Machines will not cross open streams unless snow bridges can be constructed from available snowpack. With specific permission from the District Ranger, a snowmobile may be used for grooming trails in less than 24 inches of snow if this does not result in any disturbance of vegetation or soils.

G. Automobile Service Stations

1. Service stations will be full service facilities. Full service includes fuel pumped by an attendant, windows washed, oil and other fluid levels checked. Tire pressure will be checked on request.

2. Stations will be equipped and supplied with sufficient parts to enable them to make emergency vehicle repairs. Stations will be equipped and supplied or have access to supplies (such as replacement fan belts) to enable visitors to make minor repairs. There will be a mechanic on call during regular business hours. Diesel fuel, in addition to unleaded gasoline, will be available.

3. Emergency after-hours gasoline purchases will be available at the Service-approved call-out rate. When towing services are required, the Concessioner will recommend Service-approved towing services.

4. The Concessioner will comply with all federal, state and local regulations regarding hazardous materials and environmental concerns. The Concessioner shall place a salvage drum at each service station and be equipped to immediately address any spill.

H. Showers and Laundry Facilities

1. Shower enclosures and stalls will be well maintained and clean. Water pressure and temperature will remain constant and be comfortable. The concessioner shall provide at least two clothing hooks in each stall.

2. An adequate number of washers and dryers, in good working condition, will be provided. Washers and dryers will be well maintained and clean. Change or tokens and laundry soap will be available either in vending machines onsite or at a convenient location nearby.

I. Vending

1. Vending and ice machines and their location will be easily identified, adequately illuminated, conveniently located, and of a design and color which complements the aesthetics of nearby buildings and surroundings. All proposed locations must be approved by the Service. All machines will be clean, properly stocked, and in good working condition. Signing on the machine will be generic in nature. Brand information should only be visible when at the machine.

2. Due to the inability to effectively regulate the use of cigarette vending machines by minors, cigarette vending machines will not be placed in the park.

3. When out of order for the season, signs will be posted on the vending machines with appropriate information that will direct patrons to the closest available unit.

V. Reports

A. Concessioner

1. *Management Information System:* To document visitor use impact, the Concessioner shall maintain a management information system on lodging and food service operations and shall provide the Superintendent a monthly report which will reflect the following information for each type of unit by location:

a. Units available
b. Units occupied
c. Percentage of occupancy
d. Total guest count
e. Number of guests per unit
f. Average length of stay
g. Number of meals served (breakfast, lunch and dinner).
h. For each type of guided activity:
  i. Number of trips conducted, by type
  ii. Number of participants on each.

2. *Utility Pass-Through Revenues:* The Concessioner shall provide the Superintendent with monthly reports on any utility rates recouped as pass-through revenue during the reporting month.

3. *Incident Reports:* The Concessioner will immediately report to the Service Communication Center: any fatalities or visitor-related incidents which could result in a tort claim to the United States; property damage over $500; any employee, visitor, or stock injuries requiring more than minor first aid treatment; any fire; all motor vehicle accidents; any incident that affects the park's natural and/or cultural resources; and any known or suspected violations of law involving persons not employed by the Concessioner.

4. *Human Illness Reporting:* Information on all human illnesses, whether employees or guests, is to be promptly reported to the Service's Safety Office. This information, along with other information received, will be evaluated by the Park Sanitarian to help identify outbreaks of illness associated with contaminated water or food sources, or caused by other adverse environmental conditions. Reports shall be made by telephone.

5. *Other Reports Required by the CONTRACT:*

a. Annual Financial Report—April 1 each year.
b. Certificate of Insurance—March 1 each year.
c. Statement of Insurance—March 1 each year.

(from Concessioner's insurance company)

B. Service

1. Annual Review of Utility Rates: Operating costs for utility systems and services will be reviewed annually in July, and the Concessioner will be notified in writing by August 1 of the rates for the upcoming year (which will run from October 1—September 30).

2. Annual Utility Pass-Through Reconciliation: The Concessioner's monthly pass-through reports will be reviewed annually in November to compare the projected and actual utility costs and rate pass-throughs. Differences (plus or minus) of 5% or less of utility costs will be ignored. Differences of more than 5% will result in adjustments for the following year.

VI. Sanitation

A. The Service will inspect each food service facility, market, and public shower for sanitation on a periodic basis.

B. At a minimum, the Concessioner will provide sanitation training to food service managers at the start of their employment in a food service facility and at least once every five years.

VII. Loss Control (Risk Management) Program

A. Per the Occupational Safety and Health Act of 1970, the Concessioner will provide a safe and healthful environment for all of its employees and visitors.

B. The Concessioner will develop, maintain, and implement a documented safety program (''Loss Control Plan''). An initial submittal and request of approval of this plan will be made to the Superintendent within 120 days of contract execution.

VIII. Lost and Found Policy

Each found item shall be tagged, listing the item found, location found, date and time found, and by whom it was found. If an item is not claimed within seven (7) days, it shall be turned over to the Service or mailed or transmitted to the Park in accordance with the Parks' Lost and Found Policy.

When possible, the Concessioner shall attempt to identify the ownership of the found item and provide this information to the Service.

IX. Integrated Pest Management

The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

X. Complaints

A. The Service will send complaints or comments regarding Concessioner facilities to the Concessioner for investigation and response in a timely manner. The Concessioner will provide a copy of the response to the Superintendent. A copy of the Service's response will be forwarded to the Concessioner.

In order to initiate valid and responsive visitor comments, the following notice will be prominently posted at all Concessioner cash registers and payment areas:

This service is operated by (Name of Concessioner) , a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to: Superintendent, Park Unit Name, City, State Zip Code.

XI. Advertisements/Public Information

A. All promotional material must be approved by the Superintendent prior to publication, distribution, broadcast, etc. Advertisements must include a statement that the Concessioner is authorized by the NPS, Department of the Interior, to serve the public in (Park Unit Name). Brochure changes and layout should be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes to brochure and menu texts within 15 days. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner should contact park staff well in advance to establish specific time frames for each project.

B. When used, advertisements for employment must contain a statement that the company is an equal opportunity employer.

XII. Protection and Security

A. *Visitor Protection:* Visitor protection shall be provided by the Service. Concessioner-employed security personnel, in regards to visitors, may act as private citizens but have no authority to take law enforcement action or carry firearms.

Concessioner-employed security personnel are empowered to enforce the Concessioner's employee policies and housing regulations.

B. *Fire Protection:* Fire protection shall be provided jointly by the Service and the Concessioner, with primary responsibility lying with the Service. The Concessioner has the responsibility to ensure that all buildings within its assigned area meet Fire and Life Safety Codes and that fire detection and suppression equipment is in good operating condition at all times. It is also the Concessioner's responsibility to report all structural fires immediately. The Concessioner will allow employees to be on the various developed area volunteer fire brigades and will allow time away from their primary duties for necessary training.

The Service and Concessioner will enter into a separate agreement or memorandum of understanding prior to any active participation and/or training.

C. *Emergency Medical Care:* The Service is responsible for emergency medical care. Any injury sustained by a visitor or employee in a concession facility and/or all medical emergencies should be reported promptly to the NPS Dispatcher. All employee and/or visitor illness complaints will be promptly reported to the Service through the appropriate District Ranger so that thorough investigating procedures can be completed as necessary.

During the summer, the Concessioner shall provide a full-time employee qualified to provide health information and emergency medical treatment to Concessioner's employees. Minimum certification standard is EMT–1 qualification.

D. *Concessioner Security Personnel:* During peak visitor periods (from May 1 through October 31), the Concessioner shall provide security personnel to handle in-house employee issues and to check concession facilities for security purposes.

E. *Alarm Systems:* The Concessioner will maintain existing and new alarm systems in all concession buildings to the National Fire Protection Association (NFPA) Life Safety Code unless otherwise approved in writing by the Superintendent. Systems must be tested annually, prior to operations. Trained personnel must be utilized to repair all such systems. Repairs must be completed within 12 hours of initial report of deficiencies.

XIII. Recycling and Conservation

A. *Source Reduction:* The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over ''throwaways.'' Polystyrene and plastics will be used as little as possible, and then only polystyrene not containing chlorofluorocarbons. Where disposable products are needed, products will be used which have the least impact on the environment. The use of post-consumer recycled products whenever possible is encouraged.

B. *Recycling and Beverage Container Programs:* The Concessioner shall implement a recycling program that fully supports the efforts of the Service. Products to be recycled include but are not limited to paper, newsprint, cardboard, bimetals, plastics, aluminum, glass, waste oil, antifreeze, and batteries.

Any beverage container deposits collected in excess of related operating expenses will be used for environmental projects as approved in writing by the Superintendent. An accounting of the beverage container deposits collected and distributed will be provided to the Service on an annual basis.

C. *Water and Energy Conservation:* The Concessioner will implement water and energy conservation measures for each of its operations. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

XIV. Volunteers in the Park (VIP)

The Concessioner will allow its employees to participate in the Park's VIP Volunteers in the Park program.

XV. Smoking in Public Buildings

Concession facilities must comply with Service policy and Department of

the Interior guidelines relative to Service areas. The Concessioner will post notices in all public buildings as necessary.

XVI. Quiet Hours

Quiet hours will be enforced between the hours of 10:00 pm and 6:00 am in all concession overnight facilities and the Concessioner's employee housing areas.

Superintendent
Date: _____

6. EXHIBIT "H"

Introduction to Exhibit H.

NPS authorizes private businesses (concessioners) to provide visitor facilities and services within areas of the national park system and, in certain circumstances, permits concessioners to undertake the construction of new structures and the repair and maintenance of existing structures on park area lands under the terms of a concession contract. The following proposed procedures, to be included as an exhibit to concession contracts (where applicable), govern the undertaking by a concessioner of construction projects and repair and maintenance projects that substantially effect or alter existing Concession Facilities. However, the following proposed Exhibit is a guideline only. It may be changed from time to time by NPS officials as deemed appropriate in the circumstances of a particular proposed concession contract so long as any changes are consistent with the main body of the proposed contract and applicable NPS regulations.

EXHIBIT H—Concessioner Construction and Repair and Maintenance Project Procedures

A. Introduction

This exhibit presents step-by-step procedures for Concessioner construction and repair and maintenance projects within the Park Area. Important terms are defined first. Project planning and design are presented second, followed by project supervision. All projects undertaken by the Concessioner requires a coordinated effort between the Concessioner and the Superintendent. This Exhibit applies to the construction of new structures or facilities, and the repair and maintenance of existing Concession Facilities that substantially effect or alter existing Concession Facilities (''R&M projects''). All construction and R&M projects must be proposed, approved, and accomplished under these procedures.

Preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures and shall be directed and managed as presented in the Maintenance Plan.

Construction and R&M projects not included in approved park planning documents prepared in response to the National Environmental Policy Act (NEPA) of 1969, as amended, may be required to comply with NEPA requirements. Projects within historic and culturally significant areas may require certain building management methods established by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Concessioner is responsible for all aspects of project development and implementation. The role of NPS is to provide direction, authorization and over-site to accomplish the goals and objectives of NPS. The Concessioner and the Park staff are to work closely together.

B. Definition of Terms

''Annual Construction and Repair and Maintenance Management Plan'' (CMP)—A written document presenting all construction and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

''Approved Construction Documents''—Construction project drawings and specifications approved by the Park Superintendent used by the Concessioner to direct a contractor in the type, size and quality of construction or R&M.

''Change Order''—A written agreement between the ''Construction Supervisor'' and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

''Construction Supervisor''—A Concessioner employee designated to administer and coordinate day-to-day construction and R&M projects representing the Concessioner and NPS and assuring quality work is performed. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

''Conventional Design-Bid-Build Methods''—Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

''Contact Person''—A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

''Facilitator''—A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

''Guaranteed Maximum Price Design-Build Construction Methods''—An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

''Licensed Contractor''—An entity performing construction certified or licensed by the State to perform construction services within that State.

''Project Coordinator''—A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

''Project Statement'' (PS)—An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of construction and R&M projects by a Concessioner on park property.

''Registered Technical Professionals''—Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

''Substantially Complete''—Project completion to the level where a list (''punch-list'') of items can be formulated (with the assistance of appropriate design consultants and inspectors) to direct the contractor in the completion of the construction or R&M project.

''Total Project Cost''—The total of all actual project expenditures (invoiced and paid) for completion of a construction or R&M project.

''Total Project Price''—The total of all anticipated project expenditures for completion of a construction or R&M project.

C. Project Planning and Design

(1) *Submit an Annual Construction and R&M Management Plan.* Before approval to proceed with any construction or R&M project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of construction and R&M a complete

year in advance of actual work to allow adequate time to prepare for project commencement. The plan should include any projects under discussion or identified in the Concessioner annual maintenance plan, any Concessioner capital improvement plans, and any NPS plans that involve Concessioner assigned facilities. The plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) *Notify NPS of Intent-to-Proceed.* The Park Superintendent shall receive formal written correspondence from the Concessioner providing notification of intent to proceed with any facility planning, design and/or construction and R&M. The project must be identified in the CMP the calendar year before. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope.

(3) *Identify a Project Coordinator.* The Concessioner project coordinator must be identified for each construction project.

(4) *Prepare a Project Statement (PS).* Arrange and facilitate a project planning conference with NPS staff and prepare a PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be a PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated ''Total Project Cost''; proposed schedule; milestones of NPS design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession CONTRACT. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated with written and competitively acquired price proposals or construction contracts.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are segregated from ineligible costs. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. For any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed work where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) *Submit Project Statement for NPS Review.* The PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Claiming Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for leasehold surrender interest purposes. The eligibility of any expenditures for leasehold surrender interest will not be identified until all project planning is complete to the satisfaction of the Park Superintendent including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level where the Park Superintendent may approve certain project costs as eligible for leasehold surrender interest. The Park Superintendent shall only approve final leasehold surrender interest expenditures after project completion and written project closeout.

(b) Design Required for Leasehold Surrender Eligibility. The Park Superintendent may require an appropriate level of design before construction projects eligible for leasehold surrender interest are identified. The level of project planning may extend to concept design, schematic design, or preliminary engineering design, to clearly identify the construction elements eligible for leasehold surrender interest. Some projects may require the completion of construction drawings and specifications before the leasehold surrender interest is documented to the satisfaction of the Park Superintendent. All capital improvements for which leasehold surrender interest is claimed must be defined in record ''as-built'' construction drawings and specifications.

(6) *Establish a Project File.* A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. A leasehold surrender interest project file shall be established and maintained by the Concessioner and shall include all of the above. This file shall be submitted to the Park Superintendent as the basis for the leasehold surrender interest claim. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to

identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a ''paper trail'' between expenditures deemed eligible for leasehold surrender interest purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. *Project Statement.* The PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. *Planning.* This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. *Assessment.* This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. *Design.* This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.

Section E. *Project Work.* This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with construction or R&M should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger construction and R&M projects should be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and closeout.

Section F. *Financial.* This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. Correspondence claiming and recognizing leasehold surrender interest must be organized in this section. Also contained in this section shall be a copy of the project acceptance and closeout letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

(7) *Submit Resource Compliance Documents for Review and Approval.* Historic/cultural (Section 106), and NEPA compliance documents required for each project shall be submitted to the Park Superintendent for review and approval. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Submittal of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking effecting property listed shall be performed in accordance with ''The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings''. The Concessioner must document proposed actions using the ''XXX Form'' (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least ''assessment of effect'' drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the ''Construction or R&M Completion Report'' for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

> ''Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the CONTRACT.''

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS in accordance with the above project specification. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope,

and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a ''categorical exclusion''—a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.

(8) *Submit Construction and R&M Documents for Review and Approval.* The Concessioner shall submit construction or R&M documents for review and approval to establish Approved Construction or R&M Documents for purposes of project work. Approved Construction or R&M Documents establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. ''Manufacturer's cut-sheets'' may be all that is required for some projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of construction and R&M documents and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) *Submit a Project Estimate and Schedule.* An estimate of the ''total project price'' and completion schedule shall be submitted to the Superintendent before work begins.

D. Construction and R&M Project Management Procedures

(1) *Identify a Project Supervisor.* A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct their communication concerning the nature and progress of day-to-day project activity to this person.

(2) *Submit a Total Project Price for Review.* All construction and R&M projects completed under the terms of this concession CONTRACT shall include submittal of a Total Project Price in writing to the Superintendent for review.

(a) Conditions of Total Project Price Approval Where Leasehold Surrender Interest is Requested. In cases where leasehold surrender interest is being requested, expected leasehold surrender interest expenditures shall be separately identified as part of the Total Project Price and substantiated by detailed pricing contained in a written, competitively acquired construction contract supported by record construction drawings and specifications. In addition, the Superintendent may require other correspondence or documentation to substantiate a claim.

(b) Conditions of Total Project Price Approval Where Leasehold Surrender Interest is Not Requested. Where no leasehold surrender interest is being requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) *Notice-to-Proceed with Project.* A ''Notice-to-Proceed'' with a construction or R$M project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) *Hold a Pre-Project Conference with the Contractor.* The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Park access, rules and regulations may also be discussed.

(5) *Submit Project Activity Reports (as required).* A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of project documents for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed construction and R&M projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest. The reports shall identify any changes to the approved project documents either by change order or any other variance from approved project documents. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price if the project involves leasehold surrender interest. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to project documents will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) *Submit Requests for Changes in Approved Project Documents.* The Superintendent's approval will be required before any significant changes are made to the project scope during the construction or R&M, as identified in the Approved Project Documents. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the Approved Project Documents complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the Approved Project Documents shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

(a) Changes affecting natural, cultural and/or historic resources;

(b) Changes in designated visual appearance;

(c) Changes in the interface with NPS utility and/or road facility maintenance operations;

(d) Changes in project scope and/or the estimated leasehold surrender interest, as required for capital improvement projects.

(e) Proposed changes where natural or cultural/historic resources are involved

may require a significant period of review depending on the complexity of the concern.

(7) *Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only).* When one of the four factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated leasehold surrender interest. All change orders or any other means of directing the Contractor having the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has leasehold surrender interest implications.

(8) *NPS Project Inspection.* The construction or R&M project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) *Project Supervision Documents.* Project construction drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Project Supervisor shall keep a current ''red-line'' copy of Approved Project Documents updated daily showing any changes. In addition, a well-organized file of submittals required in the Approved Project Documents and approved by professional Architects and/or Engineers must also be kept on the project site with the project documents for periodic inspection by NPS staff.

(10) *Substantial Completion Inspection and Occupancy.* Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A ''punch list'' of work items will be formulated and performed to ''close-out'' the project. The Superintendent, in writing will accept the project, when the ''punch-list'' items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) *Claiming Leasehold Surrender Interest.* Upon substantial completion of the construction or installation of capital improvements, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of leasehold surrender interest eligible expenditures incurred, which becomes the Concessioner's claim for leasehold surrender interest. The project file, containing actual invoices and the administrative record of project implementation must support these expenditures and shall be submitted to the Park Superintendent for review with the claim, as indicated above. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant. The certification must state: (1) That all the elements of the construction cost were incurred by the Concessioner; (2) that all such elements are proper under the definition of construction cost as defined in NPS Regulations and the terms of this concession CONTRACT; and (3) that all such elements were capitalized by the Concessioner on its federal income tax returns.

(12) *Project Completion Report.* Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before and after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and ''as-constructed'' drawings (see item below) for any construction. Construction projects where leasehold surrender interest is claimed may require the submittal of any other similar documents deemed by the NPS necessary to establish complete construction documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved construction documents and the approved Total Construction Price.

(13) ''*As-Constructed Drawings*''. The ''as constructed'' drawings included with the project completion report for all construction and R&M projects shall be full-size archival quality prepared in accordance with the latest AutoCAD Guidelines prepared by the National Park Service Denver Service Center before final project acceptance. At least two half-size sets of drawings shall also be provided. The drawings establishing leasehold surrender interest shall provide a full and complete record of all ''as-constructed'' facilities including reproduction of approved submittals and manufacture's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) *Request Project Acceptance and Closeout by the Superintendent.* The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. For leasehold surrender interest projects, the project closeout letter issued by the Superintendent will specify the granted amount of leasehold surrender interest associated with the construction.

7. EXHIBIT ''X''—Excerpts From 36 CFR, Part 51 Concerning Leasehold Surrender Interest

(The text of this Exhibit will be added after regulations at 36 CFR, Part 51 have been finalized.)

B. Amended sections of the Proposed Standard Language Concession Contract

The following are proposed amended sections of the proposed NPS standard concession contract published for public comment on September 3, 1999.The proposed amendments implement principles of environmental leadership and sustainability for National Park Service facilities. The amendments requiring the development and implementation of an environmental management program (EMP) for each concessioner. The EMP describes the structure by which the concessioner will ensure compliance with applicable Federal, state, and local environmental requirements and best management practices, but does not prescribe how the concessioner will carry out specific operations, actions, strategies, goals and targets. The proposed amendments provide guidance on issues the EMP must address. The EMP of each concessioner additionally will address issues specific to the required and authorized services of the concessioner under its contract. In the case of a small operation, the EMP may be brief and simple. For a larger organization, the EMP may require more detail. The proposed amendments require that the concessioner designates an Environmental Program Manager and provides certain notifications, reports and other environmental information to the National Park Service.

A final NPS standard concession contract will be published in the

Federal Register after consideration of the public comments received as a result of the September 3, 1999 notice and this notice. In addition, final short from standard concession contracts will be published in the **Federal Register** after consideration of public comments received in response to the December 22, 1999, public notice that solicited public comment on the proposed short from standard concession contracts. To the extent that the final long-form standard contract is amended as a result of consideration of public comments, including public comments on the following proposed amendments and the short form standard contracts, those amendments will be applicable to all forms of standard concession (long form and short form) contracts to the extent otherwise applicable.

Proposed Amendments to Proposed Standard Concession Contract

1. *A new ''whereas'' clause is proposed as follows:*

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship and leadership;

2. *The definition of ''applicable laws'' as contained in the proposed standard concession contract is proposed to be amended and a new definition is added to read as follows:*

(a) ''Applicable Laws'' means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) ''Best Management Practices'' (BMPs) are operational policies and activities that, in addition to ensuring full compliance with all Applicable Laws regarding public health and the environment, apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the operations of the Concessioner under this CONTRACT. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

3. *Section 5 of the proposed standard concession contract is proposed to be amended to read as follows:*

SEC. 5. Legal, Regulatory, Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall constitute sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner:
Address:
Attention:

4. *Section 6 of the proposed standard concession contract is proposed to be amended to read as follows:*

SEC. 6. Environmental Management

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter ''Environmental Management Objectives'') in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its agents, contractors and subcontractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate BMPs in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The Concessioner shall update the EMP at least annually and shall make the EMP available to the Director upon request.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals for the Concessioner that are consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner staff and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for Concessioner evaluation of staff and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy,

goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will audit its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The audit should ensure Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the audit.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under the terms of this CONTRACT on an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any EPCRA extremely hazardous substance, as defined pursuant to Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Park operations are necessary and appropriate, as determined by the Director.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any Applicable Law.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(f) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(g) Indemnification and Cost Recovery for Concession Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with section 12 of the CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner, its agents, contractors and subcontractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release or correct any environmental audit finding of non-compliance in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to Concessioner, take any such action as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action for the environmental audit finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand.

5. *Section 7 of the proposed standard concession contract is proposed to be amended by adding a section (a)(3) to read as follows:*

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

6. *Section 15(b) of the proposed standard concession contract is proposed to be amended to read as follows:*

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

7. Section 16 of the proposed standard concession contract is proposed to be amended by deleting the word ''enhance'' and inserting after the word ''protection,'' in subsection (a) the

phrase ''conservation and preservation'' and deleting the word ''enhancing'' and inserting after the word ''protecting'' in subsection (b) the phrase ''conserving or preserving.''

Dated: February 9, 2000.

Maureen Finnerty,

Associate Director, Park Operations and Education.

[FR Doc. 00–3510 Filed 2–22–00; 8:45 am]

BILLING CODE 4310–70–P

Federal Register

Wednesday,
February 23, 2000

Part III

Department of Housing and Urban Development

24 CFR Parts 25 and 30

Amendments to HUD's Mortgagee Review Board and Civil Money Penalty Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 25 and 30

[Docket No. FR–4308–I–01]

RIN 2501–AC44

Amendments to HUD's Mortgagee Review Board and Civil Money Penalty Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule makes conforming changes to HUD regulations to reflect statutory changes made by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (the Multifamily Reform Act). Among other amendments, the Multifamily Reform Act provides that a suspension issued by the HUD Mortgagee Review Board is effective, without previous 30-day written notice of violation to the mortgagee, if there is sufficient evidence that immediate action is required to protect the financial interests of HUD or the public. The Multifamily Reform Act also expanded the list of persons and types of violations subject to a civil money penalty under HUD's insured housing programs. The interim rule also makes three clarifying, non-substantive amendments to these regulations. The first clarifies under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarifies the effect of a suspension or withdrawal issued by the Board. The third clarifies that the Assistant Secretary for Public and Indian Housing may initiate a civil money penalty under the section 184 Indian housing loan guarantee program.

DATES: *Effective Date:* March 24, 2000. *Comments Due Date:* April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2350 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The Multifamily Assisted Housing Reform and Affordability Act of 1997

On October 27, 1997, President Clinton signed into law the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998) (Public Law 105–65) (the ''Multifamily Reform Act'' or ''Act''). The Multifamily Reform Act made several amendments to strengthen HUD's enforcement authority under the National Housing Act (12 U.S.C. 1701 *et seq.*), which establishes the statutory framework for HUD's insured housing programs. These programs are administered by HUD's Office of Housing-Federal Housing Administration (FHA).

Among other amendments, the Multifamily Reform Act provides that suspensions issued by the HUD Mortgagee Review Board are effective, without previous 30-day written notice of violation to the mortgagee, if there is sufficient evidence that immediate action is required to protect the financial interests of HUD or the public. The Multifamily Reform Act also expanded the list of persons and types of violations subject to a civil money penalty under HUD's FHA programs.

II. This Interim Rule—Implementing the Multifamily Reform Act

A. General

This interim rule updates HUD's FHA enforcement regulations to reflect the statutory amendments described above. Specifically, the interim rule amends the regulations at 24 CFR part 25 (which establishes the procedures governing HUD's Mortgagee Review Board) and 24 CFR part 30 (which implements HUD's civil money penalty provisions). The statutory amendments were effective upon enactment of the Multifamily Reform Act. This interim rule merely conforms HUD's FHA enforcement regulations to reflect the amended provisions of the National Housing Act. Nonetheless, HUD is issuing these amendments on an interim basis, and invites public comment on the regulatory amendments made by this interim rule. These regulatory amendments are described below:

B. Section 551 of the Multifamily Reform Act—Amendment to HUD's Mortgagee Review Board Regulations

Section 202(c) of the National Housing Act (12 U.S.C. 1708) establishes the HUD Mortgagee Review Board, which ''is empowered to initiate the issuance of a letter of reprimand, the probation, suspension or withdrawal of any mortgagee found to be engaging in activities in violation of [FHA] requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.'' Section 202(c)(4)(A) of the National Housing Act, however, requires that the Mortgagee Review Board provide a mortgagee with 30 days written notice before taking any such action. HUD's regulations implementing section 202(c) are located in 24 CFR part 25 (entitled ''Mortgagee Review Board'').

Section 551 of the Multifamily Reform Act amended section 202(c) of the National Housing Act to provide that a suspension is effective upon issuance, without the prior 30-day written notice, ''if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of [HUD] or the public.'' This rule updates 24 CFR 25.5 (entitled ''Administrative actions'') and 25.6 (entitled ''Notice of violation'') to reflect the amendment made by section 551 of the Multifamily Reform Act.

C. Section 553 of the Multifamily Reform Act—Amendment to HUD's Civil Money Penalty Regulations

Section 536 of the National Housing Act (12 U.S.C. 1735f–14) governs the imposition of a civil money penalty against certain participants in FHA programs who knowingly and materially violate specified program requirements. Before enactment of the Multifamily Reform Act, civil money penalties under section 536 were limited to mortgagees approved under the National Housing Act and lenders holding a contract of insurance under title I of the National Housing Act.

Section 553 of the Multifamily Reform Act expanded the list of persons against whom HUD may impose a civil money penalty to include any principal, officer, or employee of such mortgagee or lender, or other participants in either a mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan. Section 553 list examples of individuals who may be subject to such a penalty, including sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers. This interim rule expands the list to include consultants, contractors, subcontractors, and inspectors.

Section 553 of the Multifamily Reform Act also specifies the types of violations for which these individuals and entities may be subject to a civil money penalty. These violations are:

(1) Submission to the Secretary of information that was false, in connection with any mortgage insured

under the National Housing Act, or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity in connection with any mortgage insured under the National Housing Act, or any loan that is covered by a contract of insurance under title I of the National Housing Act; and

(3) Failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulation or directives in connection with any loan that is covered by a contract of insurance under title I of the National Housing Act.

HUD's regulations at 24 CFR part 30 (entitled ''Civil Money Penalties: Certain Prohibited Conduct'') implement HUD's civil money penalty provisions. This interim rule creates a new § 30.36 to implement the statutory amendments made by section 553 of the Multifamily Reform Act.

III. This Interim Rule—Clarifying Amendments

A. Mortgagee Review Board's Ability To Issue Suspensions

In addition to implementing sections 551 and 553 of the Multifamily Reform Act, this interim rule makes a clarifying amendment to HUD's Mortgagee Review Board regulations at 24 CFR part 25. The regulation at § 25.5(d) describes the conditions under which the Mortgagee Review Board may issue a suspension. Currently, this regulation provides that the Board may issue a suspension ''based upon adequate evidence,'' but does not specify what the adequate evidence must consist of or how long the suspension may last. This interim rule clarifies that a suspension must be based on adequate evidence of violation(s) under § 25.9 (which lists the causes for an administrative action), ''and if continuation of the mortgagee's HUD/FHA approval pending the completion of any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of HUD.'' This is the longstanding standard that HUD has consistently used to govern the issuance of suspensions under § 25.5. The rule would, therefore, not establish a new requirement or standard, but would merely conform HUD's regulations to existing agency practice.

This standard was formerly codified at 25.5(d) (see the April 1, 1995 edition of title 24 of the Code of Federal Regulations) and was removed as part of HUD's January 9, 1996 (60 FR 684) final rule, which made various streamlining and clarifying amendments to 24 CFR part 25. HUD has determined that re-codification of this standard will enhance the clarity of its Mortgagee Review Board regulations.

Although this amendment would not substantively alter the substance or meaning of § 25.5(d), HUD welcomes public comment on the amendment. All public comments will be considered in the development of the final rule.

B. Effect of Suspension or Withdrawal Issued by Mortgagee Review Board.

This interim rule revises § 25.5 to clarify the effects of a suspension or withdrawal issued by the Mortgagee Review Board. These amendments are not substantive, but are designed to make the part 25 regulations easier to understand. Among other such changes, the rule clarifies that the prohibition on the origination of new loans by suspended or withdrawn mortgagees covers both title I and title II loans under the National Housing Act.

C. Civil Money Penalties for Indian Housing Loan Guarantee Program

This interim rule also makes a clarifying, non-substantive change to § 30.40, which describes civil money penalties under the Indian housing loan guarantee program. The amendment clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under this program.

III. Other Amendments Made by the Multifamily Reform Act Not Implemented by This Interim Rule

In addition to the statutory amendments described above, the Multifamily Reform Act made several other revisions to HUD's FHA and public and assisted housing programs. For example, section 561 of the Multifamily Reform Act expands the list of persons and types of violations subject to a civil money penalty under section 537 of the National Housing Act. Further, section 563 of the Multifamily Reform Act amends the United States Housing Act of 1937 (the statutory authority for HUD's public and assisted housing programs) to provide for the imposition of civil money penalties for noncompliance with Section 8 Housing Assistance Payment contracts. The Multifamily Reform Act directs that HUD implement these statutory amendments using notice and comment rulemaking procedures. Accordingly, the amendments made by sections 561 and 563 of the Multifamily Reform Act will be the subject of a separate HUD proposed rule.

IV. Small Entities and HUD Enforcement Actions

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121, 110 Stat. 847, approved March 29, 1996) (''SBREFA'') provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 21, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, under appropriate circumstances, waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity.

With respect to the imposition of civil money penalties, HUD is cognizant that section 222 of the SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of

[insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its May 21, 1998 **Federal Register** notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment is unnecessary.

This interim rule updates HUD's FHA enforcement regulations at 24 CFR parts 25 and 30 to conform these regulations to the statutory amendments made by the Multifamily Reform Act. HUD does not have the discretion to modify these statutory requirements based on public comment. The interim rule tracks the language of the Multifamily Reform Act, and does not expand, elaborate or interpret this language. These amendments do no more than conform HUD's regulations to existing statutory authority.

The rule also clarifies under what conditions the HUD Mortgagee Review Board may issue a suspension. The rule also clarifies the effect of a suspension or withdrawal issued by the Board. Further, the rule clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under the Indian housing loan guarantee program. These amendments do not modify the scope or substance of the existing regulations. Rather, the amendments will help to eliminate confusion and conform the regulations to existing HUD practice.

Although HUD has determined that, it is unnecessary for HUD to solicit public comment before issuing this rule for effect, HUD is issuing these amendments on an interim basis and invites public comment on the interim rule. All public comments will be considered in the development of the final rule.

VI. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this interim rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this interim rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this is not anticipated to have a significant economic impact on a substantial number of small entities. As discussed in this preamble, the rule makes conforming changes to HUD regulations in 24 CFR parts 25 and 30 to reflect statutory changes made to the National Housing Act by the Multifamily Reform Act. These changes are not discretionary on the part of HUD. These changes are applicable regardless of whether HUD revises its regulations to reflect these statutory amendments.

The purpose of the legislation, as noted earlier in the preamble, is to grant additional enforcement tools to HUD to use against those who violate agreements and program requirements. The Multifamily Reform Act expanded the list of persons and the types of violations subject to civil money penalties under HUD's insured housing programs for the purpose of protecting the FHA insurance fund. To the extent that these statutory changes impact small entities it will be as a result of actions taken by small entities themselves—that is, violation of multifamily program regulations and requirements.

The rule also makes three clarifying, non-substantive amendments to these regulations. The first clarifies under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarifies the effect of a suspension or withdrawal issued by the Board. The third clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under the Indian housing loan guarantee program. These amendments do not impose new regulatory requirements, but codify existing HUD practice.

Accordingly, HUD has determined that this interim rule will have no adverse or disproportionate economic impact on small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 30

Administrative practice and procedure, Loan programs—housing and community development, Mortgages, Penalties.

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)-14; 42 U.S.C. 3535(d).

2. In § 25.5, revise paragraphs (d) and (e)(1) to read as follows:

§ 25.5 Administrative actions.

* * * * *

(d) *Suspension.* (1) *Cause for suspension.* The Board may issue a suspension if there is adequate evidence of violation(s) under § 25.9, and if continuation of the mortgagee's HUD/FHA approval pending the completion of any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of HUD.

(2) *Effect of suspension.* (i) During the period of suspension, HUD will not endorse any mortgage originated by the suspended mortgagee under the Title II program unless prior to the date of suspension:

(A) A firm commitment has been issued relating to any such mortgage; or

(B) A Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

(ii) During the period of suspension, a lender or loan correspondent may not originate new Title I loans under its Title I Contract of Insurance or apply for a new Contract of Insurance.

(3) *Effective date of suspension.* A suspension issued pursuant to § 25.6(c) is effective upon issuance. Any other suspension is effective upon receipt of the notice of suspension by the mortgagee.

(e) *Withdrawal.* (1) *Effect of withdrawal.* (i) During the period of withdrawal, HUD will not endorse any mortgage originated by the withdrawn mortgagee under the Title II program unless prior to the date of withdrawal:

(A) A firm commitment has been issued relating to any such mortgage; or

(B) A Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

(ii) During the period of withdrawal, a lender or loan correspondent may not originate new Title I loans under its Title I Contract of insurance or apply for a new Contract of Insurance. The Board may limit the geographical extent of the withdrawal, or limit its scope (e.g., to either the single family or multifamily activities of a withdrawn mortgagee). Upon the expiration of the period of withdrawal, the mortgagee may file a new application for approval under 24 CFR part 202.

* * * * *

3. Section 25.6 is amended by adding a new paragraph (c) to read as follows:

§ 25.6 Notice of violation.

* * * * *

(c) *Exception for immediate suspension.* If the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public, the Board may take a suspension action without having previously issued a notice of violation.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

4. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d).

5. Add § 30.36 to read as follows:

§ 30.36 Other participants in FHA programs.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner (or his/her designee) may initiate a civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participants in either a mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan, including:

(1) Sellers;
(2) Borrowers;
(3) Closing agents;
(4) Title companies;
(5) Real estate agents;
(6) Mortgage brokers;
(7) Appraisers;
(8) Loan correspondents;
(9) Dealers;
(10) Consultants;
(11) Contractors;
(12) Subcontractors; and
(13) Inspectors.

(b) *Knowing and material violations.* The Assistant Secretary for Housing-Federal Housing Commissioner or his/her designee may impose a civil penalty on any person or entity identified in paragraph (a) of this section who knowingly and materially:

(1) Submits false information to the Secretary in connection with any mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifies to the Secretary or submits a false certification by another person or entity to the Secretary in connection with any mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act; or

(3) Is a loan dealer or correspondent and fails to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under title I of the National Housing Act.

(c) *Amount of penalty.* The maximum penalty is $5,500 for each violation, up to a limit of $1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

6. Revise § 30.40(a) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Assistant Secretary for Public and Indian Housing (or his/her designee) may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z–13a(g)(2) concerning loan guarantees for Indian housing.

* * * * *

Dated: January 18, 2000.

Andrew Cuomo,

Secretary.

[FR Doc. 00–4193 Filed 2–22–00; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Wednesday,
February 23, 2000

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Assistance to States for the Education of Individuals With Disabilities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Assistance to States for the Education of Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of Written Findings and Decision and Compliance Agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234f, authorizes the Secretary to enter into Compliance Agreements with recipients that are failing to comply substantially with Federal program requirements. In order to enter into a Compliance Agreement, the Secretary must determine, in Written Findings and Decision, that the recipient cannot comply, until a future date, with the applicable program requirements, and that a Compliance Agreement is a viable means of bringing about such compliance. On December 10, 1999, the Secretary entered into a Compliance Agreement with the Virgin Islands Department of Education (VIDE) and issued Written Findings and Decision on that matter. Under section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Written Findings and Decision and Compliance Agreement are to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Maral Taylor, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, 400 Maryland Avenue SW, Washington DC, 20202. Telephone: (202) 205–9181. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5388.

Individual with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law applicable'' to the Federal program funds administered by this agency. Specifically, the Department is authorized to:

(1) Withhold funds,

(2) Obtain compliance through a cease and desist order,

(3) Enter into a compliance agreement with the recipient, or,

(4) Take any other action authorized by law, 20 U.S.C. 1234c(a)(1)–(4).

The Department's Office of Special Education Programs (OSEP) has been working with VIDE to address their compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA).

I. Introduction

The United States Department of Education (the Department) has determined, pursuant to 20 U.S.C. 1234c, that the Virgin Islands Department of Education (VIDE) has failed to comply substantially with the requirements of Part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. 1401, 1411–1419.[1]

On June 29, 1998, the Department issued a final monitoring report that documented serious problems with respect to the VIDE's compliance with Part B on the provision of a free appropriate public education in the least restrictive environment to children with disabilities in the Virgin Islands. As a result of these findings, the Department declared VIDE a ''high risk'' grantee and imposed special conditions on its fiscal year 1998 grant award.[2] The Department found that VIDE:

> continues not to ensure provision of a free appropriate public education in the least restrictive environment to students with disabilities. Specifically, VIDE has exhibited a continued failure (1) to provide needed related services as set forth on individualized education programs (IEPs); (2) to ensure personnel in needed service areas; (3) to provide triennial evaluations in a timely manner; and (4) to ensure due process protections. *August 28, 1998 Letter from Judith Heumann, Assistant Secretary for Special Education and Rehabilitative Services, to Liston Davis, Commission of Education, VIDE (August 28, 1998 Letter).*

The special conditions required VIDE to provide the Department, among other things, with monthly reports on the Virgin Islands' efforts to come into compliance with Part B. Those reports did not demonstrate significant progress by VIDE in meeting the requirements of Part B. As a consequence, the Department concluded, pursuant to 20 U.S.C. 1234c, that VIDE is not complying with Part B. On April 8, 1999, the Department proposed to VIDE a voluntary Compliance Agreement as a means of ensuring a continued flow of Part B funds to the Virgin Islands while a structured plan to come into full compliance with that statute is implemented.

April 8, 1999 letter from Thomas Hehir, then Director of the Office of Special Education Programs, to Ruby Simmonds, D.A., then Acting Commissioner of Education, Virgin Islands Department of Education (April 8, 1999 Letter).

The purpose of a Compliance Agreement is to bring a ''recipient into full compliance with the applicable requirements of law as soon as feasible.'' 20 U.S.C. 1234f(a). In accordance with the requirements of 20 U.S.C. 1234f(b), public hearings were conducted by Department officials in the Virgin Islands at St. Thomas, on May 18, 1999, and St. Croix, on May 19, 1999. Witnesses representing VIDE, affected students and parents, and other concerned organizations testified at this hearing on the question of whether the Department should grant VIDE's request to enter into a Compliance Agreement. The Department has reviewed this testimony, the Compliance Agreement VIDE has signed, and other relevant materials.[3] On the basis of this evidence, the Department concludes, and issues written findings as required by 20 U.S.C. 1234f(b)(2), that VIDE has met its burden of establishing the following: (1) That compliance by VIDE with Part B is not feasible until a future date, and (2) that VIDE will be able to carry out the terms and conditions of the Compliance Agreement it has agreed to sign and come into full compliance with Part B within three years of the date of this decision. During the effective period of the Compliance Agreement, three years from the date of this decision, VIDE will be eligible to receive Part B funds as long as it complies with all the terms and conditions of the Agreement. Any failure by VIDE to meet these conditions will authorize the Department to consider the Compliance Agreement no longer in effect. Under such circumstances, the Department may take any action authorized under the law, including the withholding of Part B funds from VIDE or referral to the Department of Justice. At the end of the effective period of the Compliance Agreement, VIDE must be in full compliance with Part B in order to

[1] Under the Department of Education Organization Act (DEOA), Congress transfers administration of Part B from the Commissioner of Education to the Secretary of Education 20 U.S.C. 3441(a)(1) and (a)(2)(H). Section 20, of the DEOA, 20 U.S.C. 3417, in turn delegates responsibility for Part B to the Assistant Secretary for Special Education and Rehabilitative Services. The Office of Special Education Programs (OSEP), which is part of Office of Special Education and Rehabilitative Services, in the office within the Department is primarily responsible for administering Part B 20 U.S.C. 1402(a).

[2] The Department's authority to declare a grantee ''high risk'' and impose special conditions is set out at 34 80.12.

[3] A copy of the Compliance Agreement, which was prepared by VIDE in conjunction with representatives of the Department, is appended to this decision as Appendix A.

maintain its eligibility to receive funds under that program. 20 U.S.C. 1234c.

II. Relevant Statutory and Regulatory Provisions

A. Part B of the Individuals With Disabilities Education Act

Part B, formerly Part B of the Education of the Handicapped Act, was passed in response to Congress' finding that a majority of children with disabilities in the United States ''were either totally excluded from schools or (were) sitting idly in regular classrooms awaiting the time when they were old enough to drop out.'' H. Rep. No. 332, 94th Cong., 1st Sess. 2 (1975), quoted in *Board of Education* v. *Rowley,* 458 U.S. 176, 181 (1982).[4] Part B provides Federal financial assistance to those State educational agencies (SEAs) that have in effect a policy to ensure that ''(a) free appropriate public education (FADE) is available to all children with disabilities residing in the State between the ages of three and twenty-one * * *'' 20 U.S.C. 1412(a)(1).[5] FAPE is defined as special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.340–300.350.

34 CFR 300.13.

In order to ensure that FAPE is provided, a State must ensure that the Part B requirements regarding evaluation, reevaluation, related services, timeliness and implementation of due process decisions, child find, and the least restrictive environment are met. Part B requires VIDE to ensure that:

All children with disabilities residing in the State (or territory), including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated * * *

20 U.S.C. 1412(a)(3)(A). Moreover, a child with a disability cannot receive an initial special education placement until an initial evaluation has been performed in accordance with section 614(a)(1) (B) and (C) of Part B. 20 U.S.C. 1414(a)(1)(A).[6] All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs. 20 U.S.C. 1412(a)(5)(A) and 34 CFR §§ 300.500–300.556. After initial evaluation and placement, children with disabilities must be reevaluated at least every three years. 20 U.S.C. 1414(a)(2).

Related services is defined to mean: transportation and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. 1401(22). The IEP for each child with a disability must specify the related services that are to be provided. 34 CFR 300.347(a)(3).

VIDE must also ensure that its due process system, which is a critical component of IDEA designed to protect the rights of children and their parents, meets the requirements of Part B. Because VIDE has a single tier due process system, a final decision must be issued no later than 45 days after receipt of a request for a due process hearing. 34 CFR 300.511.

Finally, VIDE is responsible for ensuring that the requirements of Part B are carried out by exercising general supervisory authority over the provision of special education and related services in the Virgin Islands. The Part B regulations specifically provide that:

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

34 CFR 300.600. This requirement must be read in conjunction with VIDE's responsibility under the General Education Provisions Act (GEPA), at 20 U.S.C. 1232d(b)(3), to adopt and use proper methods of administering the Part B program, including, among other requirements: (1) Monitoring of agencies, institutions, and organizations responsible for carrying out Part B; (2) the enforcement of the obligations imposed on those agencies, institutions, and organizations under Part B; (3) providing technical assistance, where necessary, to such agencies, institutions, and organizations; and (4) the correction of deficiencies in program operations that are identified through monitoring or evaluation.

B. Department's Authority To Enter Into a Compliance Agreement

Part B authorizes the Department, if a State fails to comply substantially with the requirements of that statute, either to withhold funds from that State or

[4] Congress first addressed the problem of educating individuals with disabilities in 1966 when it amended the Elementary and Secondary Education Act of 1965 for the purpose of ''assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children.'' Pub. L. 89–750, section 161, 80 Stat. 1204. The program was repealed in 1970 by the Education of the Handicapped Act, Pub. L. 91–230, 84 Stat. 175, Part B of which established a grant program similar in purpose to that of the repealed legislation. Spurred by two district court decisions holding that children with disabilities should be given access to a public education, *Mills* v. *District of Columbia Board of Education*, 348 F. Supp. 866 (D.D.C. 1972), and *Pennsylvania Ass'n for Retarded Children* v. *Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), in 1974 Congress greatly increased Federal funding for education of individuals with disabilities and for the first time required recipient States to adopt a ''goal of providing full educational opportunities to all handicapped children.'' Pub. L. 93–380, 88 Stat. 579, 583. This statute was recognized as an interim measure only, giving Congress an ''additional year in which to study what if any additional Federal assistance (was) required to enable the States to meet the needs of handicapped children.'' H.R. Rep. No. 94–332, at 4. The study led to the enactment of Part B. Part B was recently amended by the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17.

[5] Part B defines ''child with disabilities'' to mean a child with ''mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, needs special education and related services.'' 20 U.S.C. 1401(3)(A). For a child aged 3 through 9, the term ''child with disabilities * * * may, at the discretion of the State and the local educational agency, include a child experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development; and who, by reason thereof, needs special education and related services.'' 20 U.S.C. 1401(3)(B).

[6] Part B does not set forth a specific standard for conducting initial evaluations within a reasonable period of time, the determination or such standard is reserved to individual States, Commonwealths, and territories, and each of these entities must ensure that each educational program for their children with disabilities meets the education standards of the State, commonwealth, or territory. VIDE commits itself in the Compliance Agreement to providing a child with an initial evaluation and a determination of eligibility for special education and related services within 45 school days of referral. *See Appendix A*, Compliance Goal Statement 1.1a (Expected Outcomes).

refer the matter to the Department of Justice. 20 U.S.C. 1416(a). GEPA provides the Department with additional options for dealing with a grant recipient that it concludes is ''failing to comply substantially with any requirements of law applicable to such funds.'' 20 U.S.C. 1234c. These remedies include issuing a cease and desist order. 20 U.S.C. 1234c. As an alternative to withholding funds issuing a cease and desist order, or referral to the Department of Justice, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. In this instance, the Department has decided to address VIDE's failure to comply substantially with the requirements of Part B through a Compliance Agreement.

The purpose of a Compliance Agreement is ''to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). Before entering into a Compliance Agreement, the Department must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence available to it, the Secretary determines that compliance is genuinely not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance, he is to make written findings to that effect and publish those findings, together with the substance of any Compliance Agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A Compliance Agreement must set forth an expiration date, not later than, 3 years from the date of the Secretary's written findings under 20 U.S.C. 1234f(b)(2), by which time the recipient must be in full compliance with all program requirements. In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that the Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including withholding of funds, issuing of a cease and desist order, or referring the matter to the Department of Justice. 20 U.S.C. 1234f(d).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement is Appropriate

The Department, in deciding whether it is appropriate to enter a Compliance Agreement with VIDE, must first determine whether compliance by VIDE with Part B, including the requirements concerning evaluations, reevaluations, provision of special education and related services, timeliness of due process decisions, and general supervision is not feasible until a future date. 20 U.S.C. 1234f(b). If immediate compliance with these requirements is possible, then VIDE's continued receipt of Part B funds must be based on its coming into full compliance now, rather than its attaining compliance under the terms of an Agreement that can last up to three years. The second issue that must be resolved is whether VIDE will be able, within a period of up to three years, to come into compliance with Part B. Moreover, not only must VIDE come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward that objective while the Compliance Agreement is in effect. If such an outcome is not possible, then a Compliance Agreement between the Department and VIDE would not be appropriate under 20 U.S.C. 1234f.

B. The Noncompliance of VIDE With the Part B Requirements Identified in the Compliance Agreement Cannot Be Corrected Immediately

VIDE's failure to comply with the requirements of Part B is long-standing, caused by a number of complex facts, and, as a result, cannot be corrected immediately. The witnesses who testified at the public hearings and the Department's experience in monitoring VIDE's special education program during the past decade provide compelling support for this conclusion.

Amelia Headley Lamont, counsel for the plaintiffs in *Jones* v. *the Government of the Virgin Islands,* Civil Action No. 1984–47 (D.V.I.)—a class action lawsuit brought on behalf of the parents of children with disabilities—stated that:

> The first complaint (filed in the class action lawsuit)* * * dealt with four specific issues* * * (1) a denial of transportation services; (2) denial of related services; (3) denial of administrative due process; and (4) denial of an appropriate educational placement. All of these issues that gave rise to the filing of this action back in 1984 (are still at issue)* * *today. *U.S. Department of Education Compliance Agreement hearing, May 19, 1999, St. Croix, Virgin Islands (May 19, 1999 hearing).*

Eleanor Hirsch, Assistant Director of the Virgin Islands University Affiliate Program, provided a litany of frustrations and barriers that parents of children with disabilities in the Virgin Islands have experienced. Ms. Hirsch noted:

> a fifteen-year class action suit for lack of related services; lack of qualified teachers and other professionals, shortage of assistive technology devices; lack of inclusion with the supports and services necessary for success; no real line of authority for compliance within individual schools, unmet timelines for evaluation and assessment, IEP process, and placement; creation and implementation of individual transition plans; lack of due process; lack of Advisory Panels; and inaccessibility of buildings and programs. *Id.*

Information gathered by the Department confirms the views of these witnesses that VIDE are not in substantial compliance with Part B. In issuing its 1998 Part B monitoring report on VIDE, the Department noted a lack of progress in implementing a corrective action plan to deal with problems—identified in a 1993 monitoring report—concerning the provision of related services, personnel in needed service areas, and timely triennial evaluations. *June 29, 1998 Letter from Thomas Hehir, then Director of OSEP to Liston Davis then Commissioner of Education, VIDE.* That 1998 monitoring report also delineates specific Part B requirements that VIDE is failing to meet.

According to that report, VIDE is not providing required related services to 207 of the 1771 students with disabilities it is responsible for serving. *Enclosure B to OSEP's 1998 Monitoring Report on the Virgin Islands.* Because of transportation problems, students with disabilities in the Virgin Islands frequently are not in school for six hours, a full school day as defined by VIDE's established standards. According to the report:

> a building administrator stated that every day, students from five to eight classes in the school come to school from 30 to 40 minutes late; when buses break down (which frequently occurs) the children do not come to school at all. *Id.*
>
> OSEP was informed by a teacher at this same school: that the students in her class lose up to 45 minutes each day, at least four days per week due to problems with transportation. *Id.*

Consequently, VIDE is not, as required, by 34 CFR 300.13, ensuring that students with disabilities receive a free appropriate public education that meets the standards of the SEA. OSEP's monitors also found that VIDE is not ensuring, as required by 34 CFR 300.550(b)(2), that students with disabilities are educated in the regular educational environment unless the nature or severity of their disability justifies a more restrictive environment. *Id.*

The validity of this finding—and the substantial nature of VIDE's noncompliance—is confirmed by data provided by VIDE to the Department which indicates that, in December 1998, there were no students with disabilities in the Virgin Islands being served solely in the regular education setting. Finally, the 1998 report finds that VIDE is not, as required by Part B, including a statement of needed transition services for students with disabilities that have reached the age of sixteen. (Where appropriate, this statement is also required to be a part of the IEPs for younger students). *Id.*

After the monitoring report was issued, VIDE informed the Department that the IEP's of 246 students, who are covered by this requirement, did not contain a statement of transition services. Overall, OSEP has found that VIDE is not in substantial compliance with Part B and that this is a long-standing problem.

VIDE acknowledges that it is not complying with Part B. During the public hearings, VIDE pointed out that 196 children in the Virgin Islands have not been provided with timely initial evaluations and that 697—out of a total population of students with disabilities being serviced by VIDE of 1771—have not received timely reevaluations. *VIDE's Position Statement for the Compliance Agreement Public Hearing*. In addition, VIDE conceded in the hearings that it does not have a due process hearing officer and that, as a consequence, could not resolve the 23 due process complaints that were pending as of March 1999. *May 19, 1999 Public Hearing*. Finally, VIDE admitted, during the public hearings, that it does not have the policies and procedures needed to carry out its general supervision responsibilities. *VIDE's Position Statement for the Compliance Agreement Public Hearings*. The one effort VIDE made to monitor its special education program failed to identify and require correction of many important violations of Part B. *May 14, 1999 VIDE Office of Special Education Program, Monitoring Report*. Given the substantial noncompliance with Part B identified by OSEP through its monitoring, and VIDE's own acknowledgement of these problems, we conclude that VIDE has failed to meet its obligation, under 34 CFR 300.600, to ensure that the requirements of Part B are being met in the Virgin Islands.

There are a number of complex causes for VIDE's long-term failure to comply with Part B. One of the barriers to immediate compliance is a financial crisis that the Virgin Islands is currently facing. VIDE's Commissioner of Education, Ruby Simmonds, explained that these financial problems make it difficult for VIDE to obtain access to funds to pay for the equipment, services, and personnel needed to meet Part B. *May 19, 1999 Public Hearing*. The validity of this concern is confirmed by a Department of Interior audit report that concluded that certain agencies of the Virgin Islands have systemic financial management weaknesses. These financial weaknesses include violating the Cash Management Improvement Act by drawing down Federal funds and not promptly spending those funds and making improper interfund transfers between various Federal accounts. *Audit Report of the U.S. Department of Interior, Office of Inspector General*, No. 98-I–670 (September 1998). These actions affected funds of the VIDE and have led this Department to declare VIDE a ''high risk'' grantee for fiscal management reasons.[7]

Another barrier which affects the ability of VIDE to comply with Part B is a lack of qualified related service personnel. *VIDE Position Statement for Part B Compliance Agreement Public Hearings*. Even if access to funds were not an issue, VIDE could not, acting on its own, rapidly resolve this personnel shortage. First, VIDE's collective bargaining agreement with its employee unions provides that related services providers, such as speech/language therapists, occupational therapists and physical therapists, have to be paid on the teacher's salary scale. That salary scale, however, is not adequate to attract qualified related services personnel. The result is that VIDE has found that it is ''next to impossible'' to hire new staff. *Department of Education 1998 Part B Monitoring Resort on VIDE, Attachment B* at 6. In addition, efforts to contract for the services of related services providers—as an alternative to hiring them as employees—have been challenged by VIDE's employee unions. *May 19, 1999 Pubic Hearing*. Finally, even when a qualified person who is willing to work for VIDE is found, a time consuming and cumbersome hiring process that is not under the control of VIDE must be completed before this person can start working. *Id.*

Removing all these barriers to obtaining needed personnel will require a long-term and systematic effort on VIDE's part that will involve working with its employee union and other agencies of the Virgin Islands to change existing policies and practices so that an effective strategy for training and recruiting qualified related services providers can be implemented. Similar efforts will be needed to remove barriers that prevent VIDE from obtaining, among other things, reliable transportation for students with disabilities and timely resolution of due process hearings.

The evidence gathered by the Department at the public hearings and through its monitoring of VIDE's special education program clearly establishes an extensive failure to meet the requirements of Part B. This failure is comprehensive, affecting, among other things, the provision of timely evaluations and reevaluations, special education and related services, serving students with disabilities in the least restrictive environment, transportation of students, timely resolution of due process, and VIDE's exercise of its responsibility to provide general supervision of services for students with disabilities. These problems are not isolated examples of noncompliance that can be quickly or easily corrected, but the outgrowth of long-term and systemic failures. As such, and as illustrated by the difficulties VIDE faces in hiring qualified related services providers, VIDE's failure to comply with Part B cannot be easily resolved but can only be effectively dealt with through a comprehensive and long-term process of change. The Department, therefore, concludes that VIDE cannot come into immediate compliance with the requirements of Part B.

C. VIDE Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Part B Within Three Years

The Department has concluded that VIDE can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with Part B within three years. New leadership at the VIDE, which recognizes the

[7] This designation of VIDE as a ''high risk'' grantee because of the fiscal management weaknesses identified by the Department of Interior audit report is distinct from the Departments designation of VIDE as a ''high risk'' grantee in August 1998 because of that agency's problems with meeting Part B. *See* pages 1–2 of this memorandum, August 28, 1998, *supra*.

problems with the Virgin Islands' special education system, has been working with this Department to devise and implement appropriate remedies. This constructive and proactive approach on the part of VIDE's leadership is a critical first step to bringing the Virgin Islands into compliance with Part B. Moreover, the terms and conditions of the Compliance Agreement and special conditions that the Department will be imposing on VIDE's Part B grant award address the financial management and other problems that have undermined the ability of the Virgin Islands to meet its obligations under Part B.

In January 1999, Governor Charles W. Turnbull took office in the Virgin Islands and, during the past year, has appointed new officials to lead VIDE. VIDE's new leadership team has been willing to acknowledge that students with disabilities in the Virgin Islands are not being properly served and take responsibility for identifying the causes of that problem and possible solutions. During the public hearings, VIDE's Commissioner stated:

> I'm not making excuses for us. I know that there have been problems. I know that in some instances [VIDE] has messed up. But we are now in the process of revisiting where we are and making an effort to change those things. Since I've been on board, I've appointed a new director for the Special Education Division (who) has been reviewing the budget, the State plan and those things, beginning to make a difference in terms of how the program is run. Additionally our Assistant Commissioner has just come on board. She has joined us on Thursday, Dr. Noreen Michael * * * She is going to have oversight for special education among some other responsibilities. And because of Dr. Michael's background in educational psychology and other things she is going to be * * * able to assist us pulling this Division in shape. I ask you to give us a chance to do the work that is necessary to make Special Education work for you and your children. *May 18, 1999 Public Hearing.*

VIDE's new Commissioner and other top administrators have agreed to take responsibility for reforming the Virgin Islands' special education system. Because of the difficulty of this task, the dedication of VIDE's leadership to its attainment is a critical element to successful implementation of the Compliance Agreement.

The Department, in deciding whether VIDE can successfully implement a Compliance Agreement, has also taken into account the level of funding that VIDE receives under Part B. As an outlying area, VIDE receives its Part B award from the one percent set aside for outlying areas and freely associated States. 20 U.S.C. 1411(b). Under this provision, VIDE's Part B grant award for fiscal year 1999 will be $8,852,007, $4,998 per student. By contrast, the 50 States, the District of Columbia, and Puerto Rico receive $690 per student. This level of Federal support, even if local economic problems prevent the Virgin Islands from increasing its expenditure of its own funds on students with disabilities, provides VIDE with substantial financial resources needed to carry out the Compliance Agreement.

As noted earlier, however, financial management weaknesses of the Virgin Islands government have had an adverse impact on VIDE's capacity to gain access to those Part B funds to pay for needed personnel, equipment and services. *See* page 11 of this memorandum. Special financial management conditions that the Department will impose on VIDE's Part B grant awards, starting this fiscal year, are designed to address this problem. These special conditions are incorporated by reference into the Compliance Agreement. *See* Compliance Goal 7 of the Compliance Agreement. Under those special conditions, VIDE will have to establish a separate account for its Part B grant. Commingling of the Part B funds with other State, local, or Federal funds will be prohibited. The special Part B account will be limited to being used for purposes allowable under that program. Finally, VIDE will have to provide the Department with periodic reports on its expenditure of Part B funds, including the date of the expenditure and the number of days between drawdown of the Part B funds and their actual disbursement. All of these special financial management conditions will help to make Part B funds readily available to VIDE and help to remove one of the barriers to an improved special education system for the Virgin Islands' children with disabilities.

Finally, the Compliance Agreement itself sets out a realistic and detailed plan—that can be effectively monitored by the Department—for bringing VIDE into compliance with Part B. At the heart of the Compliance Agreement are seven Compliance goal statements that address the major areas of VIDE's noncompliance with Part B; timely evaluations and eligibility determinations, providing FADE to students with disabilities in the Virgin Islands, least restrictive environment, obtaining sufficient personnel, complaint resolution, general supervision, and fiscal accountability. Under each of these Compliance goal statements, VIDE sets out the specific steps that it will take to overcome the barriers that have prevented it from meeting the particular requirement in question in the past. For example, under Compliance goal 4, obtaining sufficient qualified personnel, VIDE sets out 19 ''Strategies/Key activities'' that it will undertake to meet this goal. These activities address the specific barriers noted above to obtaining qualified personnel: the noncompetitive salary scale for related services personnel, the slow and cumbersome hiring process, and employee union challenges to contracting for needed personnel. In addition, VIDE commits itself to working with universities in the Virgin Islands and establishing a tuition assistance program in order to increase the supply of qualified related services personnel. The Compliance Agreement also identifies the VIDE official responsible for carrying out each of the ''Strategies/Key Activities.'' Thus, a specific official can be held accountable if an activity delineated in the Compliance Agreement is not properly implemented.

In addition to specifying overall compliance goals, a plan for meeting them, and the VIDE official responsible for implementing the specific actions steps, the Compliance Agreement also sets out interim goals that VIDE must meet during the next three years in attaining compliance with Part B. *See* Tables A—G of the Compliance Agreement. Therefore, VIDE is committed not only to being in full compliance with Part B within three years, but to meeting a stringent, but reasonable, schedule for reducing the number of students not being properly served in the Virgin Islands. The Compliance Agreement also sets out data collection and reporting procedures that VIDE must follow. These provisions will allow the Department to ascertain promptly whether or not VIDE is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on VIDE, will provide the Department with the information and authority it needs to protect the Part B rights of the Virgin Islands' students.

VIDE has developed a thorough and reasonable plan for addressing the underlying causes of its failure to comply with Part B. Moreover, because of the level of funding it receives under Part B, and special financial management conditions that will be imposed on its Part B grant award, VIDE should have access to the financial resources needed to implement that plan. For these reasons, the Department concludes that VIDE can meet all the terms and conditions of the Compliance Agreement and come into full

compliance with Part B within three years.

IV. Conclusion

For the foregoing reasons, the Department finds that: (1) Full compliance by VIDE with the requirements of Part B is not feasible until a future date, and (2) VIDE can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of Part B within three years of the date of this decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with VIDE. Under the terms of 20 U.S.C. 1234f, this Compliance Agreement becomes effective on the date of this decision.

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Authority: 20 U.S.C. 1234c and 1234f and 20 U.S.C. 1401, 1411–1420.

Dated: February 16, 2000.

Richard W. Riley,

Secretary of Education.

BILLING CODE 4000–01–U

APPENDIX A—COMPLIANCE AGREEMENT

Pages 1 through 29

SPECIAL EDUCATION COMPLIANCE AGREEMENT BETWEEN THE VIRGIN ISLANDS DEPARTMENT OF EDUCATION (VIDE) AND THE UNITED STATES DEPARTMENT OF EDUCATION (ED)

INTRODUCTION

On June 29, 1998, the United States Department of Education (ED) issued a final monitoring report that documented serious problems with respect to the Virgin Islands Department of Education's (VIDE's) compliance with Part B of the Individuals with Disabilities Education Act (Part B of the IDEA). As a result of these findings, ED declared -- pursuant to 34 C.F.R. § 80.12 -- VIDE a "high risk" grantee and imposed special conditions on its fiscal year 1998 grant award. The special conditions required VIDE to provide ED with monthly reports on that jurisdiction's efforts to come into compliance with Part B of the IDEA. Those reports did not demonstrate significant progress by VIDE in meeting the requirements of Part B of the IDEA. As a consequence, ED concluded, pursuant to 20 U.S.C. § 1234c, that VIDE is not complying with Part B of the IDEA. On April 8, 1999, ED proposed to VIDE a voluntary Compliance Agreement as a means of ensuring a continued flow of Part B of the IDEA funds to that jurisdiction while a structured plan to come into full compliance with that statute is implemented. April 8, 1999 letter from Thomas Hehir, then Director of the Office of Special Education, to Ruby Simmonds, D.A., then VIDE's Acting Commission of Education. VIDE accepted this proposal and has, in conjunction with ED officials, prepared this Compliance Agreement.

Pursuant to the Compliance Agreement under 20 U.S.C. § 1234f, VIDE must be in full compliance with the requirements of Part B of the IDEA no later than three years from the date of ED's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, VIDE must ensure and document that no later than three years after the effective date of this Agreement, the following compliance goals are achieved:

1. Timely Evaluations and Eligibility Determinations: The VIDE will eliminate the number of overdue initial evaluations and triennial evaluations. The VIDE will eliminate delays in eligibility determinations and in the developments of Individualized Education Programs. The VIDE will develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

2. Free Appropriate Public Education: The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school day and full school year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs; and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

3. Least Restrictive Environment: The VIDE will ensure that access to a full continuum of placement options, including, but not limited to the general curriculum, and access to facilities and programs is available to students in all disability classifications and that services and programs are provided in the Least Restrictive Environment (LRE).

4. Sufficient Qualified Personnel: The VIDE will ensure an adequate supply of qualified, prepared, and trained special education, regular education and related services personnel that meet State standards. The VIDE will also ensure that all vacancies for the above-referenced positions are filled.

5. Complaint Resolution: The VIDE will ensure that parents are fully informed of their due process rights. The VIDE also will ensure that complaints filed by parents or the public are resolved in a timely manner pursuant to the requirements for due process State complaint procedures and/or mediation, including, but not limited to, the hiring and training of qualified complaint investigators, qualified mediators and qualified hearing officers and a system for logging and tracking complaints, mediation, and hearing requests and decisions. The VIDE will eliminate the backlog of complaints and hearing requests and ensure the timely implementation of all unappealed decisions and mediation agreements.

6. General Supervision: The VIDE will develop, submit and implement policies and procedures that are consistent with IDEA 1997, including, but not limited to the implementation of a comprehensive and effective monitoring system.

7. Fiscal Accountability: The VIDE will establish, maintain and submit fiscal policies and procedures to ensure that the funds that are paid to the Virgin Islands under Part B of the IDEA, are spent in accordance with the provisions of Part B of the IDEA, including, but not limited to a centralized accounting system.

During the period that this Compliance Agreement is in effect, VIDE is eligible to receive Part B of the IDEA funds if it complies with the terms and conditions of this Agreement and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth commitments and timetables for VIDE to meet in coming into compliance with its Part B of the IDEA obligations. Any failure by VIDE to comply with the goals, timetables, documentation, or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the Agreement no longer in effect. Under such circumstances, the Department may take any action authorized under the law, including the withholdings of Part B of the IDEA funds from VIDE or referral to the Department of Justice. This Agreement will take effect on the day the Department issues its written findings of fact, pursuant to the requirements of 20 U.S.C. § 1234f, and will expire three years from that date.

OTHER CONDITIONS

In addition to all of the terms and conditions set forth above, VIDE agrees that its continued eligibility to receive Part B of the IDEA funds is predicated upon compliance with statutory and regulatory requirements of that program that have not been addressed by this Agreement. If VIDE fails to comply with any of the terns and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any actions authorized by law, including the withholding of funds or referral to the Department of Justice. 20 U.S.C. § 1234f(d).

For the Virgins Islands Department of Education:

11/12/99

Honorable Ruby Simmonds, D.A. Date
Commissioner of Education

For the United States Department of Education:

12/10/99

Honorable Richard W. Riley Date
Secretary

Date this Compliance Agreement becomes effective
(Date of Secretary Riley's Written Decisions and Findings): 12/10/99

Expiration Date of this Agreement: 12/10/02

1. Compliance Goal Statement: Timely Evaluations and Eligibility Determinations - The VIDE will eliminate the number of overdue initial evaluations and triennial evaluations. The VIDE will eliminate delays in eligibility determinations and in the development of Individualized Education Programs. The VIDE will develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

OBJECTIVES Initial Evaluations and Placements	EXPECTED OUTCOMES	STRATEGIES/ KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
1.1 VIDE will ensure that timely initial evaluations and reevaluations that meet the requirements of section 614 of Part B of IDEA are completed for all children suspected of having disabilities and eligibility determinations, IEPs and placements are made.	**1.1a** **Initial Evaluations and IEP's**: For children with initial evaluations due **before** October 1, 1999: (A) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose initial evaluation is not conducted and eligibility determined within 45 school days of the referral date. (B) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose IEP is not developed within 30 school days of an eligibility determination	**1.1a1**- EDC will generate a list of all students who are awaiting evaluations, eligibility determinations, IEP's and placement. **1.1a2** - Diagnostic staff will complete evaluation reports within the 45 school day time frame. **1.1a3**- EDC conferences will be held to determine eligibility, develop IEP's for placements of students. **1.1a4**- EDC Coordinator, District Director/ District Coordinators (of Special Education) will submit monthly status reports to the State regarding evaluations that were completed and eligibility determinations, IEP's and placements that were made. **1.1a5**- State will submit quarterly status reports to OSEP regarding evaluations that were completed and eligibility determinations, IEPs and placements that were made. **1.1a6**- Continue to allocate funds and utilize various measures to recruit, advertise for, contract with and hire additional diagnostic staff to complete initial and triennial evaluations.	**1.1a1** 11/99 and throughout this agreement **1.1a2** 11/99 and throughout this agreement **1.1a3** 11/99 and throughout this agreement **1.1a4** 11/99 and throughout this agreement **1.1a5** 1/15/00 and throughout this agreement **1.1a6** 11/99 and throughout this agreement	**1.1a1- (Data Report A-1a) @** List of names of students **1.1a2** - Evaluation reports **1.1a3**- Names of students and placements -EDC conference notes, IEP's **1.1a4**- District monthly reports **1.1a5- Data Report A-1a, & A-1b @** **1.1a6 - Data Report F-1 @** -Copies of contracts, requisitions, RFP's, bids -Copies of advertisements - Names of additional diagnostic staff hired.	**1.1a1**- EDC Coordinators -District Coordinators -District Supervisors **1.1a2**- Diagnostic Staff **1.1a3**- District Supervisors, Diagnostic Staff, Teachers, Related Service Providers **1.1a4**- EDC coordinators - District Director of Special Education - District Coordinators of Special Education **1.1a5**- State Director of Special Education -Compliance Officer -FGPM **1.1a6**- State Director -District Directors/ Coordinators - Director of Personnel

1. Compliance Goal Statement: Timely Evaluations and Eligibility Determinations - The VIDE will eliminate the number of overdue initial evaluations and triennial evaluations. The VIDE will eliminate delays in eligibility determinations and in the development of Individualized Education Programs. The VIDE will develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

OBJECTIVES Initial Evaluations and Placements	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
1.1(Contd) VIDE will ensure that timely initial evaluations and reevaluations that meet the requirements of section 614 of Part B of IDEA are completed for all children suspected of having disabilities and eligibility determinations, IEPs and placements are made.	**1.1a** (Contd) **Initial Evaluations and IEP's**: For children with initial evaluations due **before** October 1, 1999: (A) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose initial evaluation is not conducted and eligibility determined within 45 school days of the referral date. (B) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose IEP is not developed within 30 school days of an eligibility determination.	**1.1a7**- Establish and utilize an internal monthly reporting system(manual and computerized) to track the status of initial and triennial evaluations, eligibility determinations, IEPs and placements of students.	**1.1a7** 11/99 and throughout this agreement	**1.1a7- Documentation of computerized system @** - Documentation of manual system	**1.1a7**- EDC Coordinators - Diagnostic staff - SEA Staff - LEA Staff
		1.1a8- SEA will establish and submit to OSEP for approval, policies and procedures for initial and triennial evaluations, eligibility determination, IEP and placement process.	**1.1a8** 1/00	**1.1a8- Policies and procedures manual @**	**1.1a8**- SEA administrators -District Coordinators, -EDC Coordinators, -District Supervisors - Diagnostic Staff
		1.1a9- SEA will review, revise and submit to OSEP the prereferral process to expedite the identification of students suspected of having disabilities.	**1.1a9** 1/00	**1.1a9- Revised prereferral document @**	**1.1a9**- State Director -EDC Coordinators - Diagnostic staff - SEA Staff - LEA Staff
		1.1a10- Coordinate and conduct training for district staff (administrators and education personnel) on revised policies and procedures and new prereferral process.	**1.1a10** Beginning 3/2000 or upon approval by OSEP	**1.1a10- Staff Training Logs @**, Training materials, -Training attendance logs	**1.1a10** - State Training Supervisor

1. Compliance Goal Statement: Timely Evaluations and Eligibility Determinations - The VIDE will eliminate the number of overdue initial evaluations and triennial evaluations. The VIDE will eliminate delays in eligibility determinations and in the development of Individualized Education Programs. The VIDE will develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

OBJECTIVES Initial Evaluations and Placements	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
1.1(Contd) VIDE will ensure that timely initial evaluations and reevaluations that meet the requirements of section 614 of Part B of IDEA are completed for all children suspected of having disabilities and eligibility determinations, IEPs and placements are made.	**1.1b** **Initial Evaluations and IEP's**: For children whose initial evaluation is due **on or after** October 1, 1999: (A) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose initial evaluation is not conducted and eligibility determined within 45 school days of the referral date. (B) VIDE will, in accordance with time lines set out in **Table A**, reduce to zero the number of children whose IEP is not developed within 30 school days of an eligibility determination.	**1.1b1-** For students referred on or after October 1, 1999, VIDE will utilize Strategies/Key Activities for 1.1a1-1.1a10 to ensure that students receive initial evaluations, eligibility determinations, IEPs and placements within the 45 school day timeframe.	**1.1b1- See Due Dates for 1.1a1-1.1a10**	**1.1b1- See Indicators for 1.1a1- 1.1a10. Data Report A-1c will be used instead of indicators in 1.1a5@**	**1.1b1- See Responsible Persons for 1.1a1-1.1a10**
	1.1c **Triennial Evaluations**: For children whose most recent triennial was conducted prior to October 1, 1996, VIDE will in accordance with time lines set out in Table B, reduce to zero the number of those children whose triennial evaluation was not conducted within the required three calendar years and whose eligibility was not determined within 45 school days.	**1.1c1-** For students whose triennial evaluation was due before October 1, 1999, VIDE will utilize the strategies/key activities in 1.1a1-1.1a10(except 1.1a9) to ensure that students receive triennial evaluations, continued eligibility determinations, IEPs and placements within the 45 school day timeframe.	**1.1c1- See Due Dates for 1.1a1-1.1a10 (except 1.1a9)**	**1.1c1- See Indicators for 1.1a1- 1.1a10 (except 1.1a9) -Data Report B-1 will be used instead of indicators in 1.1a5 @.**	**1.1c1- See Responsible Persons for 1.1a1-1.1a10(except 1.1a9)**

1. Compliance Goal Statement: Timely Evaluations and Eligibility Determinations - The VIDE will eliminate the number of overdue initial evaluations and triennial evaluations. The VIDE will eliminate delays in eligibility determinations and in the development of Individualized Education Programs. The VIDE will develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

OBJECTIVES Initial Evaluations and Placements	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS @= Submit to OSEP)	RESPONSIBLE PERSONS
1.1(Contd) VIDE will ensure that timely initial evaluations and reevaluations that meet the requirements of section 614 of Part B of IDEA are completed for all children suspected of having disabilities and eligibility determinations, IEPs and placements are made.	**1.1d** **Triennial Evaluations:** For children whose triennial will be due **on or after** October 1, 1999, VIDE will in accordance with time lines set out in Table B, reduce to zero the number of those children whose triennial evaluation is not conducted and eligibility determined within 45 school days of the referral date.	**1.1d1-** For students whose triennial evaluation will be due on or after October 1, 1999, VIDE will utilize the strategies/key activities in 1.1a1-1.1a10 (except 1.1a9) to ensure that students receive timely triennial evaluations.	**1.1d1- See Due Dates for 1.1a1-1.1a10 (except 1.1a9)**	**1.1d1- See Indicators for 1.1a1- 1.1a10 (except 1.1a9) -Data Report B-1 will be used instead of indicators in 1.1a5 @**	**1.1d1- See Responsible Persons for 1.1a1-1.1a10 (except 1.1a9)**

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs; and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@ = Submit to OSEP)	RESPONSIBLE PERSONS
2.1 VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	2.1a Interim Alternative Educational Settings (IAES) (As referenced in 34 CFR 300.520(a)(2); 300.521(d); 300.522(b)(2); 300.525(b)(2); 300.526(a), (b) and (c)) VIDE will, in accordance with the timelines in Table C-1, reduce to zero the number of children and youth with disabilities awaiting an appropriate placement in an interim alternative educational setting for: (A) those requiring an IAES prior to October 1, 1999; and (B) those requiring an IAES on or after October 1, 1999.	2.1a1 VIDE will establish an IAES committee to address the provision of IAES in the school districts.	2.1a1 11/99 and throughout this agreement	2.1a1-IAES Committee Report@ - Minutes of meetings - Goal and Objectives IAES	2.1a1- IAES Committee members (Asst. State Director, District Coordinator, EDC Coordinator, & State Coordinator of Curriculum Development)
		2.1a2 - VIDE will establish IAES that provide students with continued special education and related services	2.1a2 11/99 and throughout this agreement	2.1a2 - List of IAES in each school district@ - Data Report C-1 (IAES)@ -List of students placed in IAES	2.1a2 - District Superintendent, District Directors/Coordinators
		2.1a3 - VIDE will develop and submit to OSEP IAES policies and procedures that are consistent with IDEA 97.	2.1a3 1/00	2.1a3 - Policies and Procedures Manual@	2.1a3 - State Director, Asst. State Director
		2.1a4 - VIDE will establish and implement an interagency agreement with other agencies to pool funds to establish additional resources for students in need of IAES.	2.1a4 2/00	2.1a4 - Interagency Agreement@	2.1a4 - IAES Committee, Asst. State Director (Chairperson)
		2.1a5 - VIDE will provide training on IAES policies and procedures and proceed with implementation.	2.1a5 3/2000 or upon approval by OSEP	2.1a5 - Training materials, attendance logs	2.1a5 - State Training Supervisor

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs; and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@ = Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	2.1b Therapeutic Placements: (As referenced in 34 CFR 300.26 and 300.551) VIDE will, in accordance with the timelines in Table C-2, reduce to zero the number of children and youth with disabilities awaiting an appropriate placement in a therapeutic setting to implement his/her IEP for: (A) those requiring a therapeutic setting prior to October 1, 1999 (B) those requiring a therapeutic placement setting on or after October 1, 1999.	2.1b1 - Assistant State Director will gather information on various therapeutic placements and establish a list of placement options.	2.1b1 11/99 and throughout this agreement	2.1b1 - List of options@ - Program brochures - Application packages	2.1b1 - Assistant Director
		2.1b2 - The IEP team will determine students with disabilities who are eligible for therapeutic programs.	2.1b2 11/99 and throughout this agreement	2.1b2 - Data Report C-2 (Therapeutic Placements)@ - List of students in therapeutic programs - IEPs - Conference notes	2.1b2 - District Supervisors
		2.1b3 - District Coordinator will monitor students' progress in the therapeutic programs and provide quarterly reports to the SEA regarding student progress.	2.1b3 11/99 and throughout this agreement	2.1b3 - Quarterly Reports - Report Cards - Progress reports	2.1b3 - Assistant Director, District Coordinator
		2.1b4 - VIDE will continue to contract with on and off-island facilities to provide therapeutic services for students.	2.1b4 11/99 and throughout this agreement	2.1b4 - Copy of contracts@	2.1b4 - State Director
		2.1b5 - LEA and SEA staff will gather baseline data each year in order to project the needs and budget for the following year in terms of students, personnel, facilities and therapeutic programs.	2.1b5 3/2000 and annually	2.1b5 Projected baseline data	2.1b5 - District Coordinator, Assistant State Director

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs; and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@ = Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	2.1c Adjudicated Children and Youth: VIDE will, in accordance with the timelines in Table C-3, reduce to zero the number of eligible children and youth with disabilities in a juvenile or adult correctional or detention facility awaiting an appropriate placement or services to implement an IEP for: (A) those requiring special education and related services prior to October 1, 1999; and (B) those requiring special education and related services on or after October 1, 1999	2.1c1 - Initiate a memorandum of agreement/interagency agreement with appropriate agencies to coordinate service provision for students at juvenile/adult correctional facilities with IEPs or who may be suspected of having a disability. 2.1c2 - Meet with the agencies in 2.1c1 to develop a more effective method of tracking students with disabilities. 2.1c3 - Establish a current list of students with IEPs and provide services. 2.1c4 - Identify a basic screening instrument to be used by correctional facility staff to identify those students who may be in need of special education and related services. 2.1c5 - Train correctional facility staff on the use of the screening instrument 2.1c6 - Conduct evaluations, develop IEPs, and provide services to eligible students.	2.1c1 11/99 and throughout this agreement 2.1c2 11/99 2.1c3 11/99 2.1c4 11/99 2.1c5 11/99 and quarterly 2.1c6 11/99 and as required	2.1c1 - Memorandum of agreement@, Interagency agreement@ 2.1c2 - Meeting minutes, agendas 2.1c3 - Data Report C-3 (Adjudicated youth)@ - list of students 2.1c4 - Copy of screening instrument@ 2.1c5 - Training logs@ - Training attendance, dates 2.1c6 - List of students referred, Evaluation reports	2.1c1 - State Director - Asst. State Director - District Coordinator/Director - EDC Coordinators 2.1c2 - Asst. State Director - EDC Coordinators - District Coordinators 2.1c3 - District Coordinator - District Supervisor 2.1c4 - EDC Coordinator, Diagnostic Staff 2.1c5 - State Training Supervisor, EDC Coordinator, Diagnostic Staff 2.1c6 - Diagnostic Staff, District Coordinators, District Supervisors

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs: and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1d** **Extended School Year(ESY):** VIDE will ensure that, by May 15th of each year of this agreement, every child's IEP is reviewed to include a determination of the need for ESY services and that all students requiring ESY receive it during the summer of that school year.	**2.1d1-** SEA & LEA will gather and review ESY standards from other States to develop VIDE standards. **2.1d2-** SEA will submit ESY policies and procedures to OSEP for review and approval. **2.1d3-** IEP reviews will be conducted to determine students' needs for ESY services. **2.1d4-** District Supervisors and District Coordinators will submit to SEA names of students determined eligible for ESY services. **2.1d5-** LEA will provide ESY services as determined by an IEP team regardless of category and severity of disability.	**2.1d1** 11/99 **2.1d2** 1/00 **2.1d3** By 5/15/00 and May 15th of each year of this agreement **2.1d4** By 6/1/00 and annually on 6/1 for the duration of this agreement **2.1d5** 9/1/00 & annually on 9/1 for the duration of this agreement	**2.1d1-** ESY standards from other states **2.1d2- VIDE ESY policies and procedures@** **2.1d3-** IEP conference notes, IEP's **2.1d4-** List of students determined eligible for ESY **2.1d5- Data Report C-4 @** - List of students who received ESY	**2.1d1-** State Director of Special Education, - SEA Administrators, - LEA Administrators **2.1d2-** State Director of Special Education **2.1d3-** District Supervisors **2.1d4-** District Coordinators, - District Supervisors **2.1d5-** District Superintendents, - District Coordinator/ Director of Special Education, - Teaching and related service personnel

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs: and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1e** **Special Education and Related Services:** (A) For children and youth with disabilities who had related services in their IEP prior to October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving all the related services(except transportation) as set forth in their IEPs. (B) For children and youth with disabilities who have related services in their IEP on or after October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving all the related services (except transportation) identified in their IEPs.	**2.1e1**- Identify personnel vacancies and utilize the Strategies/Key Activities in Objectives 4.1 to recruit, contract and hire the necessary personnel to fill vacant positions. **2.1e2**- Submit quarterly reports of personnel vacancies to OSEP. **2.1e3**- School-based personnel will submit to District Supervisors monthly status reports of exact numbers of students not receiving special education/related services. **2.1e4**- District Supervisors will compile and submit this information to District Coordinators who will then submit to the SEA. **2.1e5**- SEA will submit this information to OSEP . **2.1e6**- Purchase and install computerized system and submit to OSEP documentation that system is operational. **2.1e7- Begin** to use computerized system to track student information and generate reports.	**2.1e1** See Due Dates for 4.1 **2.1e2** 1/15/00 and quarterly throughout agreement **2.1e3** 1/15/00 and quarterly throughout agreement **2.1e4** 11/99 and monthly **2.1e5** 1/15/00 and quarterly throughout this agreement **2.1e6** 12/31/99 **2.1e7** 12/31/99 and ongoing	**2.1e1**- See Indicators for 4.1 **2.1e2- Data Report F-1 (Related Services) @** **2.1e3**- School-based personnel reports **2.1e4**- Supervisors' reports - LEA (District) reports **2.1e5- Data Report D-1a @** **2.1e6- Documentation of System@**	**2.1e1**- See Responsible Persons for 4.1 **2.1e2**- State Director, -Compliance Officer/FGPM **2.1e3**- Teachers, -Special Education Chairpersons, -Related Service Providers **2.1e4**- District Supervisors, - District Coordinator **2.1e5**- State Director, - Compliance Officer, - FGPM **2.1e6**- State Director, Assistant State Director, **2.1e7**- SEA staff, - LEA staff

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs: and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1f** **Transportation Services:** (A) For children and youth with disabilities who had transportation services in their IEP prior to October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving the transportation services as set forth in their IEPs. (B) For children and youth with disabilities who had transportation services in their IEP on or after October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving the transportation services identified in their IEPs.	**2.1f1** - LEA will develop and implement a spot-check system/plan to verify and monitor that students are being dropped off and picked up at the appropriate times. **2.1f2**- LEA will provide the names of students requiring transportation to the Pupil Transportation Supervisor who will then submit to the LEA weekly reports of students who did not receive transportation, including dates and reasons why. **2.1f3**- LEA will submit to the SEA weekly reports of students not receiving transportation services and SEA will submit this information to OSEP quarterly. **2.1f4** - SEA will develop a bus log form to be utilized daily by bus drivers and bus aides to log student pick -ups and drop off. Logs will require signature from parties (parents, teachers/ school personnel) at the pick up and drop off points to verify times. **2.1f5** - Conduct a self-evaluation of its transportation policies, practices and procedures to determine why students are not consistently receiving transportation services.	**2.1f1** 11/99 **2.1f2** 11/99 data compiled weekly and reported quarterly through-out this agreement **2.1f3** 11/99 data compiled weekly and reported quarterly through-out this agreement **2.1f4** 11/99 **2.1f5** 11/99 and quarterly	**2.1f1- Spot-Check Plan@** **2.1f2**- List of student names who did not receive transportation, weekly reports **2.1f3**- LEA weekly report **- Data Report D-1b @** **2.1f4**- Bus log **2.1f5- Self evaluation report @**	**2.1f1**- Assistant Director, District Supervisors, Pupil Transportation Supervisor(PTS), Compliance Officer/ FGPM **2.1f2**- District Supervisors, -PTS **2.1f3**- District Coordinator/ Directors, State Director, Compliance Officer, FPGM **2.1f4**- SEA staff **2.1f5**- Same as 2.1f1

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OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1f** (Contd) **Transportation Services:** (A) For children and youth with disabilities who had transportation services in their IEP prior to October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving the transportation services as set forth in their IEPs. (B) For children and youth with disabilities who had transportation services in their IEP on or after October 1, 1999, VIDE will, in accordance with the timelines in Table D, reduce to zero the number of children and youth with disabilities not receiving the transportation services identified in their IEPs.	**2.1f6**- Develop an improved system to closely monitor the current provision of transportation services to students with disabilities. **2.1f7**- Identify and utilize various means to provide transportation to students, including but not limited to purchasing additional vehicles, hiring additional bus drivers/aides, contracting with private vendors and utilizing community resources. **2.1f8**- Develop and submit to OSEP for approval transportation policies and procedures that are consistent with IDEA 97.	**2.1f6** 11/99 **2.1f7** 11/99 and throughout this agreement **2.1f8** 1/00	**2.1f6**- Documentation of system **2.1f7** - **Data Report D-1b** -Contracts/ Requisitions, Names of bus drivers/ aides -Buses **2.1f8- Transportation policies and procedures@**	**2.1f6**- Asst. Directors, District Insular Superintendent/ Coordinator/Supervisors, Pupil Transportation Supervisor (PTS) **2.1f7**- State Director, District Director/Coordinators **2.1f8**- State Director, SEA staff, PTS

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs; and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@ = Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	2.1g - Compensatory Services and/or Financial Reimbursement: Beginning October 1, 1999 and on a quarterly basis throughout the duration of this agreement, VIDE will ensure that the needs of: (A) Every child who has not received all the special education and related services on their IEP, the IEP is reviewed by the IEP team and a determination is made as to whether the child requires compensatory education services or financial reimbursement for parentally obtained services. (B) Every child who is determined to need compensatory services receives the compensatory services within the timeline determined by the IEP team. If no timeline is determined, then, no later than 30 days after the determination of the need for compensatory services, the services must commence. (C) Every parent for whom it is determined that financial reimbursement is appropriate receive reimbursement no later than 30 days after the determination.	2.1g1 - SEA will continue to allocate funds and process claims to reimburse parents. 2.1g2 - SEA will review data from LEA supervisors to determine which students/parents are in need of financial reimbursement and/or compensatory services. 2.1g3 - For those students who did not receive all special education and related services during the duration of this agreement beginning with November, 1999, the LEA will convene Educational Planning Committee (EPC) meetings to determine students' needs for compensatory services and appropriateness of financial reimbursement for special education and related services obtained and paid for by the parent(s). 2.1g4 - LEA will submit to the SEA a list of student names who received compensatory services and financial reimbursement and dates received. 2.1g5 - SEA will submit this information to OSEP.	2.1g1 11/99 and throughout this agreement 2.1g2 11/99 and throughout this agreement 2.1g3 11/99 and throughout this agreement 2.1g4 11/99 and monthly 2.1g5 1/15/00 & quarterly throughout this agreement	2.1g1 - Processed claims, Names of parents reimbursed 2.1g2 - LEA Supervisors' monthly reports 2.1g3 - EPC Conference notes, decisions 2.1g4 - List of students and compensatory services/financial reimbursement received 2.1g5 - Numbers of students who did not receive all special education and related services, broken down by services missed and reason(s) why these services were missed and listing how many of those students were provided reimbursement or compensatory services during each quarter.@	2.1g1 - State Director - Support Staff 2.1g2 - Assistant State Director or designee 2.1g3 - District Supervisors 2.1g4 - District Coordinator 2.1g5 - State Director, Compliance Officer/FGPM

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OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1h** **Transition Services:** VIDE will: (A) In accordance with the timelines in Table E, reduce to zero the number of students whose IEPs must include a statement of transition service needs prior to October 1, 1999, that do not have transition services needs stated on their IEPs. (B) In accordance with the timelines in Table E, reduce to zero the number of students whose IEPs must include a statement of transition service needs on or after October 1, 1999, that do not have transition services needs stated on their IEPs. (C) In accordance with the timelines in Table E, reduce to zero the number of students whose IEPs must include a statement of needed transition services prior to October 1, 1999, that do not have a statement of needed transition services on their IEPs and are not receiving those services. (D) In accordance with the timelines in Table E, reduce to zero the number of students whose IEPs must include a statement of needed transition services on or after October 1, 1999, that do not have a statement of needed transition services on their IEPs and are not receiving those services.	**2.1h1**- District administrative staff will review each IEP for students 14 and older and submit to the SEA monthly reports of the names and numbers of students who did not have transition statements and or were not receiving transition services included in their IEP. **2.1h2**- District Supervisors will reconvene IEP meetings to discuss transition services for those students with no transition statements and/or not receiving transition services. **2.1h3**- District administrative staff will submit to SEA monthly reports of students whose IEP's were reconvened for transition planning. **2.1h4** - SEA will prepare and submit quarterly Data Report E (Transition Services)to OSEP. **2.1h5**- Establish interagency agreements with other agencies involved in providing transition services to students.	**2.1h1** 11/99 and monthly **2.1h2** 11/99-12/99 and ongoing throughout this agreement **2.1h3** 11/99 and monthly **2.1h4** 1/15/00 and quarterly throughout agreement **2.1h5** 12/99	**2.1h1**- District monthly reports **2.1h2**- IEP conference notes, Transition statements **2.1h3**- District monthly reports **2.1h4- Data Report E-1a, E-1b, E-2a, E-2b @** **2.1h5- Interagency agreements @**	**2.1h1** - District Coordinator, District Supervisors **2.1h2**- District Supervisors **2.1h3**- District Coordinators/Directors **2.1h4**- State Director, -Compliance Officer/ FGPM **2.1h5**- State Director, -Asst. State Director -District Coordinator

2. Compliance Goal Statement: Free Appropriate Public Education - The VIDE will ensure the timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP). This includes, but is not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy (OT), physical therapy (PT), speech and language therapy (SL), psychological counseling, and transportation services that allow for full school-day and full school-year of special education and related services. The VIDE will ensure that: 1) beginning at age 14 (or younger if determined appropriate by the IEP team) each student's IEP contains a statement of the transition service needs: and 2) beginning at age 16 (or younger if determined appropriate by the IEP team) the needed transition services are listed in the IEP and provided to each student.

OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1i** **Full school day/year:** (A) By October 31, 1999, VIDE will reduce to zero the number of children and youth who do not receive a full school year of special education and related services. (B) By October 31, 2000, VIDE will reduce to zero the number of children and youth who do not receive a full school-day of special education and related services, unless otherwise indicated in their IEP.	**2.1i1-** Commissioner will send correspondence to the District Superintendents and each school directing the immediate cessation of shortened school day/school year practices for students in special education. **2.1i2-** District Superintendents and school administrators will enforce Commissioner's directive. **2.1i3-** VIDE will build into monitoring procedures and monitoring schedule a way to determine on an on-going basis whether or not students are receiving a full school day and/or full school year. **2.1i4-** VIDE will provide compensatory services or reimbursement pursuant to 2.1g to students who did not receive a full school day/year and submit to the SEA a list of student names who have received compensatory services or reimbursement. **2.1i5-** VIDE will submit to OSEP a list of student names who have received compensatory services or reimbursement pursuant to 2.1g as a result of a shortened school day/year.	**2.1i1** 11/99 and yearly throughout this agreement **2.1i2** 11/99 and throughout this agreement **2.1i3** 11/99 and throughout this agreement **2.1i4** 11/99 and throughout this agreement **2.1i5** 1/15/00 and quarterly throughout agreement	**2.1i1- Correspondence @** **2.1i2-** Follow-up correspondence **2.1i3-** Documentation of visits made, Findings **2.1i4-** District Monthly reports **2.1i5- See Data Report in 2.1g5 @**	**2.1i1-** Commissioner, Assistant Commissioner **2.1i2-** Insular Superintendents, School Administrators **2.1i3-** District Supervisors, Compliance Officer/FGPM **2.1i4-** District Coordinators/ Supervisors, Teaching/Related service staff **2.1i5-** State Director, Compliance Officer/FGPM

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OBJECTIVES Programs and Services	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
2.1 (Contd) VIDE will ensure that children and youth with disabilities are placed in an appropriate setting to allow them to receive special education and related services.	**2.1j** **Transition from Part C to B:** VIDE will ensure that by June 30, 2000, all toddlers, age 3, who are transitioning from early childhood intervention services (Part C) and who are eligible for Part B services, have IEPs/IFSPs and are receiving special education and related services under Part B of the IDEA by their third birthday.	**2.1j1** - Monitor the implementation of the formal interagency agreement with the Department of Health, Human Services and VIDE signed in August 1998 regarding transition of students from Part C to Part B programs. **2.1j2**- VIDE will meet on a quarterly basis with the V.I. Department of Health's Birth-to-Three Program and Human Services representatives to discuss the implementation of interagency agreement. **2.1j3**- VIDE will participate in the development of I.E.P.'s for students(by age 3) in Part C programs transitioning to Part B programs. **2.1j4**- VIDE will provide a list of students ages 3 and up who need and are receiving services under Part B in accordance with their I.E.P.'s.	**2.1j1** 11/99 **2.1j2** 11/99-1/00 and quarterly through-out this agreement **2.1j3** 11/99 and through-out this agreement **2.1j4** 11/99 and through-out this agreement	**2.1j1- Copy of Interagency Agreement@** **2.1j2**- Meeting dates, agendas, & minutes **2.1j3**- IEP conference notes, IEP's **2.1j4** -List of students receiving services	**2.1j1**- Commissioner, - Assistant Commissioner **2.1j2**- Assistant State Director(or designee) -Early Childhood Special Education staff **2.1j3- District** Supervisors, Early Childhood Special Education Staff **2.1j4- District** Supervisors, District Coordinators, Early Childhood Special Education staff

3. Compliance Goal Statement: Least Restrictive Environment - The VIDE will ensure that access to a full continuum of placement options, including, but not limited to, access to the general curriculum, and access to facilities and programs, is available to students in all disability classifications and that services and programs are provided in the Least Restrictive Environment (LRE).

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
3.1 VIDE will ensure that all children and youth with disabilities have available a full continuum of placement options, including access to the general curriculum and physical access to all facilities and programs.	**3.1a** **Continuum of Settings:** By November 30, 1999, VIDE will create and disseminate to all placement teams a list of: (A) school facilities and the special education and related services that are available at each facility; (B) a list of supplementary aids and services that are generally available at all facilities; (C) the degree of physical accessibility to all programs and facilities	**3.1a1**- Review existing placement and programs, establish a list of (A) (B) & (C), and disseminate to education personnel involved with placement decisions.	**3.1a1** 11/99	**3.1a1 - List of (A) (B) & (C) available at each school @**	**3.1a1**- SEA Administrators, -District Administrators
	3.1b **Placement Process Consistent with IDEA '97:** By February 1, 2000, VIDE will eliminate eligibility criteria for specific placements and develop a new process that is individualized for each child and is consistent with the least restrictive environment requirements of Part B (34 CFR 300.550-556.)	**3.1b1**- SEA and District staff will meet together to revise and develop a placement process which eliminates the use of eligibility criteria for programs/placements along the continuum. **3.1b2**- SEA will submit to OSEP for approval, documentation of revised placement process and procedures.	**3.1b1** 11-99-1/00 and ongoing throughout this agreement **3.1b2** 1/00	**3.1b1**- Meeting dates, Meeting minutes, list of attendees **3.1b2- Revised placement process and procedures for OSEP approval @.**	**3.1b1**- SEA Administrators, District Staff Administrators, Diagnostic staff, Teaching staff **3.1b2**- State Director (or designee)

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OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
3.1 (Contd) VIDE will ensure that all children and youth with disabilities have available a full continuum of placement options, including access to the general curriculum and physical access to all facilities and programs.	**3.1c** **Training for Placement Personnel and Others:** By June 12, 2000, VIDE will train all relevant personnel on the new placement process so that placement decisions are individualized for each child and consistent with the least restrictive environment requirements of 34 CFR 300.550-556.	**3.1c1**- State Training Supervisor will coordinate, facilitate and conduct a series of training workshops on the new placement process for all personnel involved in making placement decisions for students with disabilities	**3.1c1** 2/00 or the date of OSEP approval of 3.1b2, and every six months thereafter throughout this agreement	**3.1c1** - Training materials, attendance logs, **Staff training logs@**	**3.1c1**- State Training Supervisor
	3.1d **Implement Placement Process Consistent with IDEA '97:** Beginning September 1, 2000 and throughout the duration of the agreement, VIDE will ensure that all annual placement reviews for students eligible for special education and related services are conducted with VIDE's newly revised placement process.	**3.1d1**- SEA will submit to OSEP an LRE summary report on a quarterly basis. **3.1d2**- District staff (involved in the placement process) will conduct IEP reviews utilizing the newly revised process.	**3.1d1** 1/15/00 and quarterly throughout agreement **3.1d2** 9/00 and throughout this agreement	**3.1d1- LRE Summary Report containing placement data using criteria specified in OSEP Memorandum 98-11@** **3.1d2-** IEP conference notes, IEPs, District monthly reports	**3.1d1**- State Director **3.1d2**- District Supervisors - Diagnostic Staff, Teaching/Related Service staff,
	3.1e **Broad Based Training on Least Restrictive Environment:** School administrators and regular educators will, by participating in training, identify ways to increase participation of children with disabilities with their nondisabled peers.	**3.1e1**- Provide joint training with the LEA for regular and special educators regarding the education of students with disabilities in the LRE. (Trainings will be made mandatory under the authority of the Commissioner and Insular Superintendents).	**3.1e1** 11/99 and throughout this agreement	**3.1e1**- Training materials, attendance logs, **Staff training logs@**	**3.1e1**- State Coordinator of Curriculum, State Training Supervisor, -Regular and Special Education District Coordinators, (Commissioner, Assistant Commissioner, Insular Superintendents)

3. Compliance Goal Statement: Least Restrictive Environment - The VIDE will ensure that access to a full continuum of placement options, including, but not limited to, access to the general curriculum, and access to facilities and programs, is available to students in all disability classifications and that services and programs are provided in the Least Restrictive Environment (LRE).

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
3.1 (Contd) VIDE will ensure that all children and youth with disabilities have available a full continuum of placement options, including access to the general curriculum and physical access to all facilities and programs.	**3.1f** **Physical Access to Facilities and Programs:** Devise a plan to ensure that those facilities (school buildings) and programs that have been designated as accessible, physically and programmatically, are in fact accessible to all students with disabilities.	**3.1f1**- VIDE administrators will meet to review the Office of Civil Rights'(OCR) 1999 Monitoring Report (of August 1998 visit) and results of September 1999 follow-up visit to VIDE' s schools that were designated as accessible.	**31f1** 11/99 and ongoing	**3.1f1**- Meeting minutes	**3.1f1** - Assistant Commissioner, State Director Special Education (or designee), DIstrict Superintendents, Director of Architectural Engineering (DAE), - Administrator of Plant & Maintenance (APM), Legal Counsel
		3.1f2- DAE and APM will make on-site assessments of the issues outlined in the OCR report and develop a corrective action plan with deadlines for corrections of each violation found.	**3.1f2** 11/99	**3.1f2-Corrective Action Plan @**	**3.1f2**- Director of Architectural Engineering - Administrator of Plant & Maintenance
		3.1f3- DAE and APM will submit quarterly reports to the SEA of violations corrected.	**3.1f3** 11/99 and quarterly	**3.1f3**- Quarterly Reports	**3.1f3**- Same as 3.1f2
		3.1f4 - SEA will forward those reports to OSEP on a quarterly basis.	**3.1f4** 1/15/00 and quarterly throughout agreement	**3.1f4- Quarterly Reports@**	**3.1f4**- State Director of Special Education, Compliance Officer
		3.1f5- All placements/programs along the least restrictive environment continuum will be made fully accessible to students with disabilities.	**3.1f5** 9/2000	**3.1f5- List of placements/ programs that are fully accessible @**	**3.1f5**- Insular Superintendents, District Coordinator/Director of Special Education, Director of Architectural Engineering, Administrator of Plant & Maintenance(APM)

4. Compliance Goal Statement: Sufficient Qualified Personnel - The VIDE will ensure an adequate supply of qualified, prepared, and trained special education, regular education and related services personnel that meet State standards. The VIDE will also ensure that all vacancies for the above-referenced positions are filled.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
4.1 VIDE will ensure an adequate supply of qualified, prepared, and trained special education and related services personnel, other services staff, complaint investigators, mediators and due process hearing officers that meets state standards.	**4.1a** **Sufficient Qualified Personnel:** VIDE will, in accordance with the timelines in Table F, reduce to zero the number of unfilled positions for special education and related services personnel, other services staff, complaint investigators, mediators and due process hearing officers by: (A) requesting from the appropriate legislative and/or executive agencies, special waiver authority, and/or expedited hiring authority, including, but not limited to financial and educational incentive (s) for person (s) filling the above listed positions.	**4.1a1** -All parties including the Commissioner of Education, Governor, Director of Personnel will develop, sign and enforce a Memorandum of Agreement to expedite the NOPA process for hiring special education personnel. (The 1988 court order in the Nadine Jones case which orders the expeditious processing of Sp. Ed. personnel NOPA's will be used to enforce.)	**4.1a 1** 11/99	**4.1a1- Copy of MOA @**	**4.1a1** - Commissioner -Asst. Commissioner
		4.1a2. - Commissioner will request from the appropriate legislative and/or executive agencies, special waiver authority, and/or expedited hiring authority, including, but not limited to financial and educational incentive for special education and other services staff.	**4.1a2** 11/99 and quarterly	**4.1a2- Letter of requests and quarterly reports on results of requests @.**	**4.1a2** - Commissioner -Asst. Commissioner -Legal Counsel
		4.1a3. - Commissioner will send correspondence to the Chief Negotiator requesting the initiation of negotiations for Special Education and related services personnel salaries/or bonuses/stipends.	**4.1a3** 11/99 and quarterly	**4.1a3- Letter of requests and quarterly reports on results of requests @.**	**4.1a3** - Commissioner -Asst. Commissioner
		4.1a4- Establish tuition assistance program to retrain existing personnel and offer scholarships for professionals interested in obtaining degrees in needed areas of expertise such as in related service fields.	**4.1a4** Beginning 1/00	**4.1a4- List of professionals who received tuition assistance @**	**4.1a4** - State Director - Asst. State Director

4. Compliance Goal Statement: Sufficient Qualified Personnel - The VIDE will ensure an adequate supply of qualified, prepared, and trained special education, regular education and related services personnel that meet State standards. The VIDE will also ensure that all vacancies for the above-referenced positions are filled.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
4.1 (Contd) VIDE will ensure an adequate supply of qualified, prepared, and trained special education and related services personnel that meet state standards.	**4.1b** **Sufficient Qualified Personnel:** VIDE will, in accordance with the timelines in Table F, reduce to zero the number of unfilled positions for special education and related services personnel, other services staff, complaint investigators, mediators and due process hearing officers by: (B) pursuing alternative hiring and staffing strategies, including, but not limited to, the use of contracted vendors and individuals who are in the process of attaining appropriate certification and/ or licensure.	**4.1b1**- Continue to budget, contract for and hire related service personnel, diagnostic staff and other personnel needed to provide services. **4.1b2**- Initiate a process to address certification and qualification standards of all teaching and administrative staff. **4.1b3**- Initiate memorandum of agreement(MOA) in order to have a streamlined process for processing all contracts for professional services. **4.1b4**- Conduct recruitment activities sponsored by the Division of Special Education and the Division of Personnel & Labor Relations. **4.1b5**- Advertise for special education personnel through the use of various media sources. **4.1b6**- Submit to OSEP quarterly reports of contracted hiring plan. **4.1b7**- Contact universities on and off-island to explore possible student internship programs. **4.1b8**- Division of Personnel and Division of Special Education will develop a comprehensive recruitment and hiring plan. **4.1b9** - Develop agreements with universities to supply the V.I. with student interns in special education and related services fields.	**4.1b1** 11/99 and as needed **4.1b2** 11/99 **4.1b3** 11/99 **4.1b4** 11/99 and and every six months thereafter during this agreement. **4.1b5** 11/99 and throughout this agreement **4.1b6** 1/15/00 and quarterly throughout agreement **4.1b7** 1/00 **4.1b8** 2/00 **4.1b9** 9/00 and every six months thereafter during this agreement.	**4.1b1- Data Report F-1 @** - Copies of Contracts **4.1b2**- Documentation of tracking process **4.1b3 - Copy of MOA for timely processing of contracts for professional services @** **4.1b4 - Copy of recruitment activity calendar @** **4.1b5 - Copy of advertisements @** **4.1b6- Data Report F-1@** **4.1b7** - Copy of correspondence to universities. **4.1b8- Copy of recruitment & hiring plan @** **4.1b9- Copy of agreements and six month reports of the results of the agreements@**	**4.1b1**- State Director, District Director/ Coordinators **4.1b2**- Director of Personnel, State Director **4.1b3**- Commissioner, Asst. Commissioner **4.1b4** - State Director, Director of Personnel **4.1b5** - Director of Personnel, State Director **4.1b6**- State Director(or designee) **4.1b7** - SEA administrative Staff, District Director/ Coordinator **4.1b8**- State Director, State Training Supervisor, Director of Personnel **4.1b9**- SEA administrative Staff, District Director/ Coordinator

4. Compliance Goal Statement: Sufficient Qualified Personnel - The VIDE will ensure an adequate supply of qualified, prepared and trained special education, regular education and related services personnel that meet State standards. The VIDE will also ensure that all vacancies for the above-referenced positions are filled.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@ = Submit to OSEP)	RESPONSIBLE PERSONS
4.1 (Contd) VIDE will ensure an adequate supply of qualified, prepared and trained special education and related services personnel that meet state standards.	4.1c Sufficient Qualified Personnel: VIDE will, in accordance with the timelines in Table F, reduce to zero the number of unfilled positions for special education and related services personnel, other services staff, complaint investigators, mediators and due process hearing officers by: (C)Providing staff development opportunities for regular education and related service personnel.	4.1c1 - Will conduct a comprehensive needs assessment to determine areas/topics of training to be offered to education personnel. 4.1c2 - Facilitate and conduct training, workshops and continuing education of educational personnel. 4.1c3 - Collaborate with various programs to explore staff development needs of the district and how these programs can help train in those areas of need.	4.1c1 11/99-12/99 4.1c2 11/99 and on going 4.1c3 11/99	4.1c1 - Needs assessment plan@; Documentation of results of needs assessment@ 4.1c2 - Staff training logs@; Training materials; Attendance logs 4.1c3 - Documentation of correspondence, copy of agreements	4.1c1- State Training Supervisor 4.1c2 - State Training Supervisor 4.1c3- State Training Supervisor, District Director/Coordinator
	4.1d Sufficient Qualified Personnel: VIDE will, in accordance with the timelines in Table F, reduce to zero the number of unfilled positions for special education and related services personnel, other services staff, complaint investigators, mediators and due process hearing officers by: (D) developing a Comprehensive System of Personnel Development (CSPD) by January 1, 2000 that is consistent with 34 CFR 300.380-382.	4.1d1 - State Training Supervisor and South East Regional Resource Center (SERRC) will collaborate to establish VIDE CSPD Plan, that at a minimum, includes periodic assessment of staffing needs. 4.1d2 - CSPD Committee will reconvene in Fall '99 to develop plan. 4.1d3 - CSPD plan will be compiled and completed by CSPD Committee with technical assistance from SERRC. CSPD plan will be submitted to OSEP.	4.1d1 11/99-1/00 4.1d2 11/99 4.1d3 1/00	4.1d1 - Copies of all correspondence with SERRC regarding CSPD 4.1d2 - Copies of agendas and minutes of CSPD committee meetings 4.1d3 - CSPD plan@; Periodic (quarterly) reports of staffing needs@	4.1d1 - State Training Supervisor, SERRC, CSPD Committee 4.1d2 - State Training Supervisor, CSPD Committee 4.1d3 - State Director, State Training Supervisor

5. Compliance Goal Statement: Complaint Resolution - The VIDE will ensure that parents are fully informed of their due process rights. The VIDE also will ensure that complaints filed by parents or the public are resolved in a timely manner pursuant to the requirements for due process hearings, State Complaint procedures and/or mediation, including, but not limited to, the hiring and training of qualified complaint investigators, qualified mediators and qualified hearing officers and a system for logging and tracking complaints, mediation, and hearing requests and decisions. The VIDE will eliminate the backlog of complaints and hearing requests and ensure the timely implementation of all unappealed decisions and mediation agreements.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
5.1 VIDE will ensure that all complaints and due process hearing requests are resolved in a timely manner, 60 and 45 days respectively.	**5.1a** **Complaints:**(34 CFR 300.660-662) (A) For complaint resolutions due before October 1, 1999, VIDE will investigate and issue written decisions immediately (34 CFR 300.661(4)(b)(1)). (B) For complaint resolutions due on or after October 1, 1999, VIDE will investigate and issue written decisions no later than 60 days from the date the complaint was filed unless an extension was granted only if exceptional circumstances exist with respect to a particular complaint.	**5.1a1** - Investigate and issue written decisions for complaints filed before October 1, 1999. **5.1a2**- Refine current complaint tracking system for state complaints so that complaints filed on or after October 1, 1999 are investigated and written decisions are issued within the 60 day timeframe. **5.1a3**- Hire additional staff to adequately handle and track SEA complaints. **5.1.a 4**- Revise and submit to OSEP SEA complaint procedures which are consistent with IDEA 97.	**5.1a1** 11/99 **5.1a2** 11/99 **5.1a3** 11/99 and quarterly throughout agreement **5.1a4** 11/99 and quarterly throughout agreement	**5.1a1- Copies of written decisions @** **5.1a2** - Documentation of refined system **5.1a3- Names of staff hired to address complaints @** **5.1a4- Policies and procedures regarding SEA complaints.@**	**5.1a1** - State Compliance Officer, FGPM **5.1a2** - SEA Staff **5.1a3** - State Director **5.1a4** - State Director
	5.1b **Due Process Hearing Complaints:** (34 CFR 300.511 and 300.528) (A) For due process hearing decisions due before October 1, 1999, VIDE will issue due process hearing decisions in accordance with the timelines in Table G. (B) For due process hearing decisions due on or after October 1, 1999, VIDE will issue due process hearing decisions in accordance with the timelines in Table G.	**5.1b1**- Identify and train local attorneys to be due process hearing officers. **5.1b2**- Provide an adequate pool of due process hearing officers. **5.1b3**- Schedule and conduct due process hearings and issue written decisions for those due before October 1, 1999. **5.1b4**- Conduct due process hearings and issue written decisions for those due on or after October 1, 1999. **5.1.b5**- Revise and submit to OSEP SEA due process procedures which are consistent with IDEA 97.	**5.1b1** 11/99 **5.1b2** 11/99 **5.1b3** 11/99-3/00 and quarterly throughout this agreement **5.1b4** 11/99 and quarterly throughout this agreement **5.1b5** 1/00	**5.1b1- Staff Training Logs @**, List of trainees, Training materials, attendance logs **5.1b2- List of due process hearing officers @** **5.1b3- Data Report G @** - Due Process Schedule, **5.1b4- Data Report G @** **5.1b5- Policies and procedures regarding due process complaints @**	**5.1b1**- Assistant State Director, SERRC **5.1b2**- Assistant State Director **5.1b3**- State Compliance Officer(facilitator) **5.1b4**- State Compliance Officer(facilitator) **5.1b5** - State Director

5. Compliance Goal Statement: Complaint Resolution - The VIDE will ensure that parents are fully informed of their due process rights. The VIDE also will ensure that complaints filed by parents or the public are resolved in a timely manner pursuant to the requirements for due process hearings, State Complaint procedures and/or mediation, including, but not limited to, the hiring and training of qualified complaint investigators, qualified mediators and qualified hearing officers and a system for logging and tracking complaints, mediation, and hearing requests and decisions. The VIDE will eliminate the backlog of complaints and hearing requests and ensure the timely implementation of all unappealed decisions and mediation agreements.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@=Submit to OSEP)	RESPONSIBLE PERSONS
5.1 (Contd) VIDE will ensure that all complaints and due process hearing requests are resolved in a timely manner, 60 and 45 days respectively.	**5.1c** **Adequate Supply of Mediators and Hearing Officers:** By December 31, 1999, VIDE will ensure that it has an adequate supply of qualified mediators and due process hearing officers to resolve requests for due process hearings consistent with timelines at 34 CFR 300.511 and 300.528.	**5.1c1**- Identify and train prospective candidates to be mediators. **5.1c2**- Provide an adequate pool of mediators and due process hearing officers.	**5.1c1** 11/99 and annually **5.1c2** 1/15/00 and biannually throughout agreement	**5.1c1** - List of candidates to be trained as mediators **5.1c2 -List of qualified mediators and due process hearing officers@**	**5.1c1**- Assistant State Director, SERRC **5.1c2**- Assistant State Director
	5.1d **Parent Training on Complaint Resolution, Mediation and Due Process:** As a result of VIDE parental notice, training, and outreach, parents will better understand the different complaint resolution, mediation and due process procedures.	**5.1d1**- Develop a better collaborative relationship with parent information centers and advocacy groups to increase ability to effectively outreach to parents. **5.1d2**- Develop training curriculum and provide training for parents and teachers on complaint resolution, mediation and due process requirements. **5.1d3**- Explore various and creative means of providing training to parents on due process requirements and on procedural safeguards.	**5.1d1** 11/99 and on going **5.1d2** 11/99 and on going throughout this agreement **5.1d3** 11/99 and on going	**5.1d1- Staff training logs @** - Copy of correspondence with PTI's and advocacy groups - Training materials, attendance logs **5.1d2 - Staff training logs@** -Copy of parent training schedule , Copy of parent training curriculum **5.1d3**- Documentation of parent training events	**5.1d1**- State Training Supervisor, SEA staff, LEA staff **5.1d2**- State Training Supervisor **5.1d3**- State Training Supervisor, SEA staff, LEA staff

6. Compliance Goal Statement: General Supervision - The VIDE will develop, submit and implement policies and procedures that are consistent with IDEA 1997, including, but not limited to, implementation of a comprehensive and effective monitoring system.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
6.1 VIDE will ensure that it has in place policies and procedures consistent with IDEA '97, including an effective and comprehensive monitoring system.	**6.1a** **Policies and Procedures Consistent with IDEA '97:** By January 31, 2000 VIDE will revise all policies and procedures consistent with IDEA '97 and submit to OSEP for approval	**6.1a1** - Work with SERRC staff to compile policies and procedures into one document/manual and submit to OSEP for review and approval. **6.1a2**- Revise and submit to OSEP for approval parental rights handbook. **6.1a3**- Provide training to education personnel and parents on the new policies and procedures. **6.1a4**- Districts will implement approved state policies and procedures.	**6.1a1** 11/99- 12/99 **6.1a2** 1/00 **6.1a3** Beginning 2/00 and on going **6.1a4** 2/00 or upon approval by OSEP	**6.1a1- Revised policies and procedures Manual @** Correspondence with SERRC, Meeting minutes **6.1a2- Parental Rights Handbook@** **6.1a3**- Staff Training logs@, Training materials, Attendance logs **6.1a4**- Documentation that policies are being implemented.	**6.1a1**- State Director of Special Education, Assistant State Director, Compliance Officer, FGPM **6.1a2**- SEA staff **6.1a3**- State Training Supervisor **6.1a4**- District Superintendents, District Directors/Coordinators, District Supervisors, Principals, Education Personnel
	6.1b **Improved Monitoring and Enforcement:** (A) By January 31, 2000, VIDE will revise its monitoring system to include (1) policies and procedures (2) monitoring cycle scheduled (3) monitoring instrument consistent with IDEA '97 requirements (4) corrective and enforcement actions. (B) By no later than March 1, 2000, VIDE will implement its revised monitoring system and submit quarterly reports to OSEP.	**6.1b1**- Collaborate and meet with (SERRC) who will provide technical assistance to refine the monitoring process to include new policies, instrument, cycle schedule, and corrective and enforcement actions. **6.1b2**- Begin training for the districts on draft monitoring system and manual pending approval by OSEP. **6.1b3**- SEA will begin conducting monitoring activities in the districts.	**6.1b1** 1/31/00 **6.1b2** 1/00- 3/00 **6.1b3** 3/00 and as scheduled	**6.1b1- Revised Monitoring Process Manual@** -Correspondence with SERRC, Meeting minutes, **6.1b2- Staff training logs@**, Training materials, attendance logs **6.1b3- Monitoring Reports and corrective action plans@**	**6.1b1**- State Compliance Officer, FGPM, Assistant State Director, SERRC, SEA staff **6.1b2**- State Training Supervisor, Compliance Officer **6.1b3**- Compliance Officer, FGPM, Monitoring Team

7. Compliance Goal Statement: Fiscal Accountability- The VIDE will establish, maintain and submit fiscal policies and procedures to ensure that funds that are paid to the Virgin Islands under Part B of the Act, are spent in accordance with the provisions of Part B, including but not limited to a centralized accounting system.

OBJECTIVES	EXPECTED OUTCOMES	STRATEGIES/KEY ACTIVITIES	DUE DATE	INDICATORS (@= Submit to OSEP)	RESPONSIBLE PERSONS
7. 1 VIDE will ensure that it has in place a fiscal accounting system and procedures that ensures that IDEA Part B funds are spent in accordance with the provisions of Part B.	**7.1a** **Special Conditions:** (A) VIDE will ensure compliance with the Special Conditions regarding fiscal accountability, if any, attached to its Federal Fiscal Year 1999 Part B grant award.	**7.1a1**- Adhere to all special conditions applied to VIDE for expenditure of IDEA Part B funding.	**7.1a1** Beginning 11/99 and throughout this agreement	**7.1a1**- Documentation that verifies adherence to Special Conditions	**7.1a1**- Commissioner, State Director
		7.1a2- Hire additional staff to handle fiscal accounting matters within the Division of Special Education.	**7.1a2** 11/99 and on going	**7.1a2- Names of additional staff hired @**	**7.1a2**- State Director
		7.1a3- Revise and submit to OSEP fiscal policy and procedures manual that is consistent with IDEA 97.	**7.1a3** 1/00 and on going	**7.1a3- Copy of fiscal policies and procedures manual@**	**7.1a3**- State Director(or designee)

APPENDIX B—TABLES

Pages 1 through 9

TABLE A: Initial Evaluations and Individualized Education Programs

Date of Reporting Period	Total number (#) of initial evaluations not completed (referred prior to 10/99)	Total number (#) of initial evaluations completed during reporting period (due prior to 10/99)	Total percent (%) of students determined eligible and awaiting an IEP (due prior to 10/99)	Total percent (%) of students awaiting completion of an initial evaluation (due on or after 10/99	Total percent (%) of students determined eligible and awaiting an IEP (due on or after 10/99)	Date Report Submitted to USDOED
10/1/99-12/31/99	200	70	75%	85%	85%	1/15/00
1/1/00-3/31/00	130	60	50%	75%	75%	4/15/00
4/1/00-6/30/00	70	45	25%	60%	60%	7/15/00
7/1/00-9/30/00	25	25	0	45%	45%	10/15/00
10/1/00-12/31/00	0	0	0	30%	30%	1/15/01
1/1/01-3/31/01	0	0	0	15%	15%	4/15/01
4/1/01-6/30/01	0	0	0	5%	5%	7/15/01
7/1/01-9/30/01	0	0	0	0	0	10/15/01
10/1/01-12/31/01	0	0	0	0	0	1/15/02
1/1/02-3/30/02	0	0	0	0	0	4/15/02
4/1/02-6/30/02	0	0	0	0	0	7/15/02
7/1/02-9/30/02	0	0	0	0	0	10/15/02

TABLE B: Triennial Evaluations

Date of Reporting Period	Total number (#) of outstanding triennials (due prior to 10/99[1])	Total number (#) of triennials completed during reporting period (due prior to 10/99[1])	Total percentage (%) of students awaiting a triennial evaluation (due 10/99 and after[2])	Date Report Submitted to USDOED
10/1/99-12/31/99	597	247	85%	1/15/00
1/1/00-3/31/00	450	200	75%	4/15/00
4/1/00-6/30/00	250	150	60%	7/15/00
7/1/00-9/30/00	100	100	45%	10/15/00
10/1/00-12/31/00	0	0	30%	1/15/01
1/1/01-3/31/01	0	0	15%	4/15/01
4/1/01-6/30/01	0	0	5%	7/15/01
7/1/01-9/30/01	0	0	0	10/15/01
10/1/01-12/31/01	0	0	0	1/15/02
1/1/02-3/30/02	0	0	0	4/15/02
4/1/02-6/30/02	0	0	0	7/15/02
7/1/02-9/30/02	0	0	0	10/15/02

[1]The most recent evaluation or reevaluation is dated prior to 10/96.

[2]The most recent evaluation or reevaluation is dated 10/96 or after.

TABLE C-1: FAPE - Interim Alternative Educational Settings (IAES)[3]

Date of Reporting Period	Percentage (%) of students requiring an IAES prior to 10/99, that are not receiving an IAES	Percentage (%) of students requiring an IAES on or after 10/99, that are not receiving an IAES	Date Report Submitted to USDOED
10/1/99-12/31/99	75%	85%	1/15/00
1/1/00-3/31/00	50%	60%	4/15/00
4/1/00-6/30/00	25%	35%	7/15/00
7/1/00-9/30/00	0	10%	10/15/00
10/1/00-12/31/00	0	0	1/15/01
1/1/01-3/31/01	0	0	4/15/01
4/1/01-6/30/01	0	0	7/15/01
7/1/01-9/30/01	0	0	10/15/01
10/1/01-12/31/01	0	0	1/15/02
1/1/02-3/30/02	0	0	4/15/02
4/1/02-6/30/02	0	0	7/15/02
7/1/02-9/30/02	0	0	10/15/02

[3] See references to IAES in 34 CFR §§300.520(a)(2); 300.521(d); 300.522(b)(2); 300.525(b)(2); 300.526(a),(b) and (c).

TABLE C-2: FAPE - Therapeutic Placements[4]

Date of Reporting Period	Percentage (%) of students requiring a therapeutic placement prior to 10/99, that are not receiving a therapeutic placement to implement their IEP	Percentage (%) of students requiring a therapeutic placement on or after 10/99, that are not receiving a therapeutic placement to implement their IEP	Date Report Submitted to USDOED
10/1/99-12/31/99	90%	95%	1/15/00
1/1/00-3/31/00	75%	85%	4/15/00
4/1/00-6/30/00	55%	70%	7/15/00
7/1/00-9/30/00	35%	55%	10/15/00
10/1/00-12/31/00	20%	40%	1/15/01
1/1/01-3/31/01	10%	25%	4/15/01
4/1/01-6/30/01	0	10%	7/15/01
7/1/01-9/30/01	0	0	10/15/01
10/1/01-12/31/01	0	0	1/15/02
1/1/02-3/30/02	0	0	4/15/02
4/1/02-6/30/02	0	0	7/15/02
7/1/02-9/30/02	0	0	10/15/02

[4] See 34 CFR §§300.26 and 300.551

Table - C-3: FAPE - Special Education and Related Services for Eligible Children and Youth in Juvenile or Adult Correctional Facilities

Date of Reporting Period	Percentage (%) of children and youth in juvenile or adult correctional facilities, eligible prior to 10/99, that are not receiving special education and related services	Percentage (%) children and youth in juvenile or adult correctional facilities, eligible on or after 10/99, that are not receiving special education and related services	Date Report Submitted to USDOED
10/1/99-12/31/99	90%	95%	1/15/00
1/1/00-3/31/00	80%	85%	4/15/00
4/1/00-6/30/00	70%	75%	7/15/00
7/1/00-9/30/00	60%	65%	10/15/00
10/1/00-12/31/00	50%	55%	1/15/01
1/1/01-3/31/01	40%	45%	4/15/01
4/1/01-6/30/01	30%	35%	7/15/01
7/1/01-9/30/01	20%	25%	10/15/01
10/1/01-12/31/01	10%	15%	1/15/02
1/1/02-3/30/02	0	5%	4/15/02
4/1/02-6/30/02	0	0	7/15/02
7/1/02-9/30/02	0	0	10/15/02

TABLE D: Provision of Related Services

Date of Reporting Period	Percentage (%) of students, who had **related services** in their IEP prior to 10/99, that are not receiving the **related services** identified on their IEPs (except transportation)	Percentage (%) of students, who have **related services** in their IEP on or after 10/99, that are not receiving **related services** identified on their IEPs (except transportation)	Percentage (%) of students, who had **transportation services** in their IEP prior to 10/99, that are not receiving **transportation services** identified on their IEPs	Percentage of students, who have **transportation services** in their IEP on or after 10/99, that are not receiving **transportation services** identified on their IEPs	Date Report Submitted to USDOED
10/1/99-12/31/99	90%	95%	65%	75%	1/15/00
1/1/00-3/31/00	75%	85%	50%	60%	4/15/00
4/1/00-6/30/00	55%	70%	35%	45%	7/15/00
7/1/00-9/30/00	35%	55%	20%	30%	10/15/00
10/1/00-12/31/00	20%	40%	0	15%	1/15/01
1/1/01-3/31/01	10%	25%	0	0	4/15/01
4/1/01-6/30/01	0	10%	0	0	7/15/01
7/1/01-9/30/01	0	0	0	0	10/15/01
10/1/01-12/31/01	0	0	0	0	1/15/02
1/1/02-3/30/02	0	0	0	0	4/15/02
4/1/02-6/30/02	0	0	0	0	7/15/02
7/1/02-9/30/02	0	0	0	0	10/15/02

TABLE E: Provision of Transition Services

Date of Reporting Period	Percentage of students eligible for a statement of transition service needs on their IEPs[5] prior to 10/99, that do not have a statement of transition service needs on their IEP	Percentage of students eligible for a statement of transition service needs on their IEPs on or after 10/99, that do not have a statement of transition service needs on their IEP	Percentage of students, eligible for a statement of needed transition services on their IEPs [6] prior to 10/99, that do not have a statement of needed transition services on their IEPs and are not receiving those services	Percentage of students, eligible for a statement of needed transition services on their IEPs on or after 10/99, that do not have a statement of needed transition services on their IEPs and are not receiving those services	Date Report Submitted to USDOED
10/1/99-12/31/99	75%	85%	75%	85%	1/15/00
1/1/00-3/31/00	50%	65%	50%	65%	4/15/00
4/1/00-6/30/00	25%	45%	25%	45%	7/15/00
7/1/00-9/30/00	0	25%	0	25%	10/15/00
10/1/00-12/31/00	0	5%	0	5%	1/15/01
1/1/01-3/31/01	0	0	0	0	4/15/01
4/1/01-6/30/01	0	0	0	0	7/15/01
7/1/01-9/30/01	0	0	0	0	10/15/01
10/1/01-12/31/01	0	0	0	0	1/15/02
1/1/02-3/30/02	0	0	0	0	4/15/02
4/1/02-6/30/02	0	0	0	0	7/15/02
7/1/02-9/30/02	0	0	0	0	10/15/02

[5] 34 CFR §300.347(b)(1).

[6] 34 CFR §300.347(b)(1) and (2).

TABLE F: Personnel Vacancies

Date of Reporting Period	Number of vacant positions (as of 10/1/99) still unfilled = **15**	For positions becoming vacant after 10/1/99, percentage remaining unfilled	Date Report Submitted to USDOED
10/1/99-12/31/99	14	95%	1/15/00
1/1/00-3/31/00	12	85%	4/15/00
4/1/00-6/30/00	11	75%	7/15/00
7/1/00-9/30/00	10	65%	10/15/00
10/1/00-12/31/00	8	55%	1/15/01
1/1/01-3/31/01	7	45%	4/15/01
4/1/01-6/30/01	5	35%	7/15/01
7/1/01-9/30/01	4	25%	10/15/01
10/1/01-12/31/01	2	15%	1/15/02
1/1/02-3/30/02	1	5%	4/15/02
4/1/02-6/30/02	0	0	7/15/02
7/1/02-9/30/02	0	0	10/15/02

TABLE G: Due Process Hearings

Date of Reporting Period	Total number (#) of due process hearing decisions due prior to 10/1/99, but the decision is still pending	Total number (#) of final decisions issued for due process hearings due prior to 10/1/99	Due process hearings requested where a decision is due on or after 10/1/99 and was not issued within the required timelines.[7]	Date Report Submitted to USDOED
10/1/99-12/31/99	15	10	75%	1/15/00
1/1/00-3/31/00	0	5	50%	4/15/00
4/1/00-6/30/00	0	0	25%	7/15/00
7/1/00-9/30/00	0	0	0	10/15/00
10/1/00-12/31/00	0	0	0	1/15/01
1/1/01-3/31/01	0	0	0	4/15/01
4/1/01-6/30/01	0	0	0	7/15/01
7/1/01-9/30/01	0	0	0	10/15/01
10/1/01-12/31/01	0	0	0	1/15/02
1/1/02-3/30/02	0	0	0	4/15/02
4/1/02-6/30/02	0	0	0	7/15/02
7/1/02-9/30/02	0	0	0	10/15/02

[7] The timelines are normally 45 calendar days unless a specific extension is granted. 34 CFR §300.511.

APPENDIX C—DATA REPORTS

Pages 1 through 42

VIDE will use the following Data Reports to report, on quarterly basis, to the U.S. Department of Education, Office of Special Eduction Programs. Each report will be submitted on a quarterly basis as follows:

Reporting Period	Date Due to USDOED/OSEP
10/1/99-12/31/99	1/15/00
1/1/00-3/31/00	4/15/00
4/1/00-6/30/00	7/15/00
7/1/00-9/30/00	10/15/00
10/1/00-12/31/00	1/15/01
1/1/01-3/31/01	4/15/01
4/1/01-6/30/01	7/15/01
7/1/01-9/30/01	10/15/01
10/1/01-12/31/01	1/15/02
1/1/02-3/30/02	4/15/02
4/1/02-6/30/02	7/15/02
7/1/02-9/30/02	10/15/02

OSEP Data Report	A-1-a: Initial Evaluations	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: For the first reporting period (10/1/99), the number is based on VIDE's submission. For subsequent reporting periods (beginning with 1/1/00-3/31/00), record the number from Column #4 of the previous reporting period.

Column #3: Record the number of those students that were counted in Column #2 and whose initial evaluation was completed during this reporting period. Include only actual numbers completed and not estimates/predicted numbers.

Column #4: Subtract the number in Column #3 from the number in Column #2 and report the result in Column #4. This number should be moved to Column #2 for the next reporting period.

Column #5: Record only the number of students referred for an initial evaluation during this reporting period.

Column #6: Record the total number of students from Column #9 of the prior reporting period.

Column #7: Record the total number of students whose initial evaluation became due this reporting period. Except for the first reporting period (10/1/99-12/31/00), this will be students who were referred either this reporting period or the previous reporting period.

Column #8: Record the total number of students from Column #6 and Column #7 whose initial evaluation was completed during this reporting period.

Column #9: Add the number from Column #6 to Column #7 and subtract from that total the number from Column #8. Report the result in Column #9. This number will be carried over to Column #6 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Reporting Period	Total # of students whose initial evaluation was due prior to 10/1/99 and has not been completed as of the beginning of this reporting period [carryover # from Col. #4]	Total # of students from Column #2 whose initial evaluation was completed during reporting period	Total # of students from Column #2 whose initial evaluation was not completed as of the end of this reporting period (Col. # 2 - Col.# 3 = Col. #4) [carryover # to Col. #2]	Total # of students referred for an initial evaluation during this reporting period	Total # of students from the prior reporting periods who still require an initial evaluation to be completed [carryover # from Col. #9]	Total # of students whose initial evaluation became due during this reporting period	Total # of students from Columns #6 & #7 whose initial evaluation was completed during this reporting period	Total # of students whose initial evaluation is due after 10/1/99 whose initial evaluation was not completed as of the end of this reporting period ((Col. #6 + Col. 7#) - Col. #8 = Col. # 9))
10/1/99-12/31/99	**200**				**0**			
1/1/00-3/31/00								
4/1/00-6/30/00								
7/1/00-9/30/00								
10/1/00-12/31/00								
1/1/01-3/31/01								
4/1/01-6/30/01								
7/1/01-9/30/01								
10/1/01-12/31/01								
1/1/02-3/30/02								
4/1/02-6/30/02								
7/1/02-9/30/02								

OSEP Data Report	A-1-b: Eligibility and IEP for students whose initial evaluation was due prior to 10-1-99	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students whose initial evaluation was due prior to 10-1-99 who were found eligible during this reporting period.

Column #3: Record the total number of students whose IEPs were due as of the end of the prior reporting period but were not completed. Record the number from Column #6 from the previous reporting period.

Column #4: Except for the first reporting period (10/1/99 through 12/31/99), record the total number of students from Column #2 who were found eligible during this reporting period or prior reporting period and whose IEP became due during this reporting period.

Example: A student found eligible on 3/02/00 (i.e. during the last 30 days of a reporting period) will have an IEP that becomes due 30 calendar days thereafter. This student would be counted when his/her IEP becomes due, i.e. during the next reporting period (4/01/00-6/30/00).

Column #5: Record the total number of students Columns #3 and #4 whose IEPs were completed as of the end of this reporting period.

Column #6: Record the total number of students from Columns #3 and #4 whose IEPs were not completed as of the end of this reporting period ((Column #3 + Column #4) minus Column #5). This number should be carried over to Column #3 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reporting Period	Total # of students whose initial evaluation was due prior to 10-1-99 who were found eligible during this reporting period	Total # of students whose IEPs were due as of the end of the prior reporting period but were not completed [carryover # from Col. #6]	Total # of students from Column # 2 whose IEPs became due during this reporting period	Total # of students from Columns #3 and #4 whose IEPs were completed as of the end of this reporting period	Total # of students from Columns #3 and #4 whose IEPs were not completed as of the end of this reporting period ((column #3 + column #4) minus column #5 = column #6) [carryover to Column #3]
10/1/99-12/31/99		0			
1/1/00-3/31/00					
4/1/00-6/30/00					
7/1/00-9/30/00					
10/1/00-12/31/00					
1/1/01-3/31/01					
4/1/01-6/30/01					
7/1/01-9/30/01					
10/1/01-12/31/01					
1/1/02-3/30/02					
4/1/02-6/30/02					
7/1/02-9/30/02					

U.S. Department of Education Compliance Agreement Data Report: A-1-b

OSEP Data Report	A-1-c: Eligibility and IEP(s) for students referred on or after 10-1-99	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students whose initial evaluation is due on or after 10-1-99 who were found eligible during this reporting period.

Column #3: Record the total number of students whose IEPs were due as of the end of the prior reporting period but were not completed. Record the number from Column #6 from the previous reporting period.

Column #4: Except for the first reporting period (10/1/99 through 12/31/99), record the total number of students from Column #2 who were found eligible during this reporting period or prior reporting period and whose IEP became due during this reporting period.

Example: A student found eligible on 3/02/00 (i.e .during the last 30 days of a reporting period) will have an IEP that becomes due 30 calendar days thereafter. This student would be counted when his/her IEP becomes due, i.e. during the next reporting period (4/01/00 - 6/30/00).

Column #5: Record the total number of students from Columns #3 and #4 whose IEPs were completed as of the end of this reporting period.

Column #6: Record the total number of students from Columns #3 and #4 whose IEPs were not completed as of the end of this reporting period ((Column #3 + Column #4) minus Column #5). This number should be carried over to Column #3 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reporting Period	Total # of students whose initial evaluation is due on or after 10-1-99 who were found eligible during this reporting period	Total # of students whose IEPs were due as of the end of the prior reporting period but were not completed [carryover # from Col. #6]	Total # of students from Column # 2 whose IEPs became due during this reporting period	Total # of students from Columns #3 and #4 whose IEPs were completed as of the end of this reporting period	Total # of students from Columns #3 and #4 whose IEPs were not completed as of the end of this reporting period ((Column #3 + Column #4) minus Column #5 = Column #6) [carryover to Column #3]
10/1/99-12/31/99		0			
1/1/00-3/31/00					
4/1/00-6/30/00					
7/1/00-9/30/00					
10/1/00-12/31/00					
1/1/01-3/31/01					
4/1/01-6/30/01					
7/1/01-9/30/01					
10/1/01-12/31/01					
1/1/02-3/30/02					
4/1/02-6/30/02					
7/1/02-9/30/02					

OSEP Data Report	B-1: Triennial Evaluations	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: For the first reporting period the number is based on VIDE's submission. For subsequent reporting periods (beginning with 1/1/00-3/31/00), record the number from Column #4 of previous reporting period.

Column #3: Record the total number of those students that were counted in Column #2 and whose triennial evaluation was completed during this reporting period. Include only actual numbers completed and not estimates/predicted numbers.

Column #4: Subtract the number in Column #3 from the number in Column #2 and report the result in Column #4. This same number should be moved to Column #2 for next reporting period.

Column #5: Record the total number of students from Column #8 from prior reporting period.

Column #6: Record the total number of students whose triennial evaluation became due this reporting period. This will be students (1) whose anniversary date of their triennial evaluation became due and/or (2) who referred for a triennial evaluation by a parent or teacher.

Column #7: Record the total number of students from Column #5 and Column #6 whose triennial evaluation was completed during this reporting period.

Column #8: Add the number from Column #5 to Column #6 and subtract from that sum the number from Column #7. Report the result in Column #8. This number will be carried over to Column #5 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing a triennial evaluation prior to 10/1/99 [carryover # from Col. #4]	Total # of students from Column #2 whose triennial evaluation was completed as of the end of this reporting period	Total # of students from Column #2 whose triennial evaluation was not completed as of the end the reporting period (Col. 2- Col. 3= Col. 4) [carryover # to Col. #2]	Total # of students from the prior reporting period who still require a triennial evaluation to be completed [carryover # from Col. #8]	Total # of students whose triennial evaluation became due during this reporting period	Total# of students from Columns #5 & #6 whose triennial evaluation was completed during this reporting period	Total # of students whose triennial evaluation is due after 10/1/99 who still require an triennial evaluation as of the end of this reporting period) ((Col. #5 + Col. #6) - Col. #7 = Col. #8)) [carryover to next period - Col. #5]
10/1/99-12/31/99	**697**			**0**			
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

OSEP Data Report	C-1: FAPE - Interim Alternative Educational Settings (IAES)[1]	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students needing an IAES prior to 10/1/99 and still need an IAES during this reporting period

Column #3: Record total number of students from Column #2 who received an IAES during this period.

Column #4: Record the total number of students from Column #2 who needed an IAES, did not receive an IAES and who still need an IAES as of the end of this reporting period

Column #5: Record the number from Column #8 of the total number of students needing an IAES on or after 10/1/99 that did not receive an IAES and still need an IAES during this reporting period.

Column #6: Record the total number of students who needed an IAES during the prior reporting period and still need an IAES during this reporting period

Column #7: Record the combined number from Columns #5 and #6 of students who received an IAES during this reporting period.

Column #8: Record the combined number from Columns #5 and #6 of students that did not receive an IAES during this reporting period and still need an IAES as of the end of this reporting period.

[1] Until the timelines in VIDE's policies and procedures are approved by OSEP, still need (i.e. awaiting) means a delay beyond 5 school days.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing an IAES prior to 10/1/99 and who still need an IAES during this reporting period	Total # of students in column #2 who received an IAES during this reporting period	Total # of students in column #2 who needed an IAES, did not receive an IAES and who still need an IAES as of the end of this reporting period	Total # of students needing an IAES on or after 10/1/99 that did not receive an IAES and still need an IAES during this reporting period [carryover # from column #8]	Total # of students who needed an IAES during the prior reporting period and still need an IAES during this reporting period	Total # of students in Columns # 5 and #6 receiving an IAES during this reporting period	Total # of students from Columns #5 and #6 that did not receive an IAES during this reporting period and still need an IAES as of the end of this reporting period
10/1/99-12/31/99					**0**		
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

U.S. Department of Education Compliance Agreement Data Report: C-1

OSEP Data Report	C-2: FAPE - Therapeutic Placements[1]	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students needing a therapeutic placement prior to 10/1/99 not receiving a therapeutic placement as of the beginning of this reporting period. For the reporting period beginning 1/1/00 and thereafter, this number will be carried over from the number in Column #4 of the previous reporting period.

Column #3: Record the total number of students in Column #2 that received a therapeutic placement during this reporting period.

Column #4: Record the total number of students in Column #2 that are still not receiving a therapeutic placement as of the end of this reporting period. Subtract the number in Column # 3 from the number in Column # 2 and record this number in Column # 4. This number should be reported in Column # 2 for the next reporting period.

Column #5: Record the total number of students who needed a therapeutic placement after 10/1/99 and still are not receiving a therapeutic placement as of the beginning of this reporting period. Record the number from Column # 8 of the previous reporting period.

Column #6: Record the additional number of students who needed a therapeutic placement during this reporting period.

Column #7: Record the number of students from Columns # 5 and # 6 receiving a therapeutic placement during this reporting period.

Column #8: This number represents the total number of students needing a therapeutic placement after 10/1/99 and not receiving a therapeutic placement as of the end of this reporting period. Add the number in Column #5 to the number in Column #6 and subtract from that sum, the number in Column #7. Report the result in Column #8. This number should be carried over to Column #5 for the next reporting period.

[1]Until the timelines in VIDE's policies and procedures are approved by OSEP, not receiving (i.e. awaiting) means a delay beyond 10 school days.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing a therapeutic placement prior to 10/1/99 not receiving a therapeutic placement as of beginning of this reporting period	Total # of students in Column #2 receiving a therapeutic placement during this reporting period	Total # of students in Column #2 still not receiving a therapeutic placement as of the end of this reporting period (Col. #2- Col. #3 = Col. #4) [carryover # to Col. #2]	Total # of students needing a therapeutic placement after 10/1/99 that still are not receiving a therapeutic placement as of the end of the previous reporting period (Column #8) [carryover # from Col. #8]	Total # of additional students needing a therapeutic placement during this reporting period	Total # of students in Columns # 5 and #6 receiving a therapeutic placement during this reporting period	Total # of students needing a therapeutic placement after 10/1/99 and not receiving a therapeutic placement as of the end of this reporting period ((Col.#5 + Col. 6 - Col. #7 = Col. 8) [carryover # to Col. #5]
10/1/99-12/31/99				0			
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

U.S. Department of Education Compliance Agreement Data Report: C-2

OSEP Data Report	C-3: FAPE - Special Education and Related Services for Eligible Children and Youth in Juvenile and Adult Correctional Facilities[1]	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of eligible students in juvenile and adult correctional facilities needing special education and related services prior to 10/1/99 not receiving special education and related services as of the beginning of this reporting period. For the second reporting period and thereafter, this number will be carried over from the number Column 4 of the previous reporting period.

Column #3: Record the total number of students in Column #2 that received special education and related services during this reporting period.

Column #4: Record the total number of students in Column #2 that are still not receiving special education and related services as of the end of this reporting period. Subtract the number in Column # 3 from the number in Column # 2 and record this number in Column # 4. This number should be reported in Column # 2 for the next reporting period.

Column #5: Record the total number of eligible students in juvenile and adult correctional facilities needing special education and related services after 10/1/99 and still are not receiving special education and related services as of the beginning of this reporting period. Record the number from Column #8 of the previous reporting period.

Column #6: Record the additional number of eligible students in juvenile and adult correctional facilities needing special education and related services during this reporting period.

Column #7: Record the number of students from Columns # 5 and # 6 receiving special education and related services during this reporting period.

Column #8: This number represents the total number of eligible students in juvenile and adult correctional facilities needing special education and related services after 10/1/99 and not receiving special education and related services as of the end of this reporting period. Add the number in Column #5 to the number in Column #6 and subtract from that sum, the number in Column #7. Report the result in Column # 8 and this number should be carried over to Column #5 for the next reporting period.

[1] Until the timelines in VIDE's policies and procedures are approved by OSEP, not receiving (i.e. awaiting) means a delay beyond 10 school days.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of eligible students in juvenile and adult correctional facilities needing special education and related services prior to 10/1/99 not receiving special education and related services as of the beginning of this reporting period	Total # of eligible students in Column #2 receiving special education and related services at the end of this reporting period	Total # of eligible students in Column #2 still not receiving special education and related services at the end of this reporting period (Col. #2- Col. #3 = Col. #4) [carryover # to Col. #2]	Total # of eligible students from prior reporting period still requiring special education and related services (Column #8) [carryover # from Col. #3]	Total # of additional eligible students requiring special education and related services and not receiving them during this reporting period	Total # of eligible students in Columns # 5 and #6 receiving special education and related services at the end of this reporting period	Total # of students eligible after 10/1/99 requiring special education and related services that are are not receiving special education and related services at the end of this reporting period ((Col.#5 + Col. 6 - Col. #7 = Col. 8) [carryover # to Col. #5]
10/1/99-12/31/99				0			
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

U.S. Department of Education Compliance Agreement Data Report: C-3

OSEP Data Report	C-4: FAPE - Provision of Extended School Year (ESY) Services	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period
Column #2: Record the total number of IEPs that were reviewed by the IEP team to determine whether or not a student is eligible for extended school year services (ESY)
Column #3: Record the total number of students determined eligible for ESY services (based on the number of IEPs reviewed in Column #2)
Column #4: Record the total number of students who received extended school year services (based on the number of students determined eligible in Column #3).

Column 1	Column 2	Column 3	Column 4
Reporting Period	Total number of IEPs reviewed during this reporting period to determine eligibility for Extended School Year Services (ESY).	Total number of students determined eligible for Extended School Year Services (ESY) during this reporting period.	Total number of students who received Extended School Year Services (ESY) during this reporting period
10/1/99-12/31/99			0
1/1/00-3/31/00			0
4/1/00-6/30/00			
7/1/00-9/30/00			
10/1/00-12/31/00			0
1/1/01-3/31/01			0
4/1/01-6/30/01			

U.S. Department of Education Compliance Agreement Data Report: C-4

Column 1	Column 2	Column 3	Column 4
Reporting Period	Total number of IEPs reviewed during this reporting period to determine eligibility for Extended School Year Services (ESY).	Total number of students determined eligible for Extended School Year Services (ESY) during this reporting period.	Total number of students who received Extended School Year Services (ESY) during this reporting period
7/1/01-9/30/01			
10/1/01-12/31/01			0
1/1/02-3/30/02			0
4/1/02-6/30/02			
7/1/02-9/30/02			

U.S. Department of Education Compliance Agreement Data Report: C-4

OSEP Data Report	D-1-a: Provision of Related Services (except transportation): Occupational Therapy, Physical Therapy, Speech/Language Therapy, Psychological Counseling, Other	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the number of students needing related services prior to 10/1/99 not receiving all their related services as of the beginning of this reporting period. This number will be carried over from the number in Column #4 of the previous reporting period.

Column #3: Record the number of students in Column #2 that received all their related services at the end of this reporting period.

Column #4: Record the number of students in Column #2 that are still not receiving all their related services as of the end of this reporting period. Subtract the number in Column # 3 from the number in Column # 2 and record this number in Column # 4. This number should be reported in Column # 2 for the next reporting period.

Column #5: Record the number of students from the prior reporting period who did not receive all their related services after 10/1/99 and still are not receiving their related services as of the beginning of this reporting period. Record the number from Column # 8 of the previous reporting period.

Column #6: Record the number of additional of students who required related services during this reporting period and did not receive these related services.

Column #7: Record the number of students from Columns # 5 and # 6 who received all their related services during this reporting period.

Column #8: This number represents the total # of students requiring related services after 10/1/99 and not receiving all their related services as of the end of this reporting period. Add the number in Column #5 to the number in Column #6 and subtract from that sum, the number in Column #7. Report the result in Column # 8. This number should be carried over to Column #5 for the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
10/1/99-12/31/99	O. T.	O. T.	O. T.	O. T. 0	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T. 0	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech 0	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns. 0	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other 0	Other	Other	Other
1/1/00-3/31/00	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: D-1-a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
4/1/00-6/30/00	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other
7/1/00-9/30/00	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: D-1-a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
10/1/00-12/31/00	O. T.	O. T.	O.T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P.T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	O. T.	Other	Other	Other	Other
1/1/01-3/31/01	O. T.	O. T.	P. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	Speech	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Psych.Couns.	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: D-1-a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
4/1/01-6/30/01	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other
7/1/01-9/30/01	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: D-1-a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
10/1/01-12/31/01	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other
1/1/02-3/30/02	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: D-1-a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing related service(s) prior to 10/1/99 not receiving all their related service(s) as of beginning of reporting period [carryover # from Col. #4]	Total # of students in Column # 2 receiving all their related service(s) at the end of reporting period	Total # of students from Column #2 still not receiving all their related service(s) at the end of this reporting period (Col. #2 - Col. # 3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period that were not receiving all their related service(s) [carryover # from Col. #8]	Total # of additional students requiring related service(s) and not receiving them during this reporting period	Total # of students from Columns #5 and # 6 receiving all their related service(s) at the end of this reporting period	Total # of students eligible after 10/1/99 requiring related service(s) that are not receiving all their related service(s) at the end of the reporting period ((Col. #5 + Col. #6) - Col. #7 = Col. #8) [carryover # to Col. #5]
4/1/02-6/30/02	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.
	Speech	Speech	Speech	Speech	Speech	Speech	Speech
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.
	Other	Other	Other	Other	Other	Other	Other
7/1/02-9/30/02	O. T.	O. T.	O. T.	O. T.	O. T.	O. T.	O. T. P. T. Speech Psych.Couns. Other
	P. T.	P. T.	P. T.	P. T.	P. T.	P. T.	
	Speech	Speech	Speech	Speech	Speech	Speech	
	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	Psych.Couns.	
	Other	Other	Other	Other	Other	Other	

U.S. Department of Education Compliance Agreement Data Report: D-1-a

OSEP Data Report	D-1-b: Provision of Transportation Services	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students needing transportation services prior to 10/1/99 not receiving transportation services as of the beginning of this reporting period. This number will be carried over from the number in Column #4 of the previous reporting period.

Column #3: Record the number of students in Column #2 that received all their transportation services at the end of this reporting period.

Column #4: Record the number of students in Column #2 that are still not receiving all their transportation services as of the end of this reporting period. Subtract the number in Column # 3 from the number in Column # 2 and record this number in Column # 4. This number should be reported in Column # 2 for the next reporting period.

Column #5: Record the number of students from the prior reporting period who did not receive all their transportation services after 10/1/99 and still are not receiving all their transportation services as of the beginning of this reporting period. Record the number from Column # 8 of the previous reporting period.

Column #6: Record the number of additional of students who required transportation services during this reporting period and did not receive these transportation services.

Column #7: Record the number of students from Columns # 5 and # 6 who received all their transportation services during this reporting period.

Column #8: This number represents the total # of students requiring transportation services after 10/1/99 and not receiving all their transportation services as of the end of this reporting period. Add the number in Column #5 to the number in Column #6 and subtract from that sum, the number in Column #7. Report the result in Column # 8. This number should be carried over to Column #5 for the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of students needing transportation services prior to 10/1/99 and not receiving transportation services as of the beginning of this reporting period	Total # of students from Column #2 receiving all their transportation services at the end of this reporting period	Total # of students from Column #2 still not receiving all their transportation services at the end of this reporting period (Col. #2- Col. #3 = Col. #4) [carryover # to Col. #2]	Total # of students from prior reporting period still requiring transportation services [carryover # from Col. #8]	Total # of additional students requiring transportation services and not receiving them during this reporting period	Total # of students from Columns # 5 and #6 receiving all their transportation services at the end of this reporting period	Total # of students eligible after 10/1/99 requiring transportation services that are not receiving transportation services at the end of this reporting period ((Col.#5 + Col. 6 - Col. #7 = Col. 8) [carryover # to Col. #5]
10/1/99-12/31/99				0			
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

U.S. Department of Education Compliance Agreement Data Report: D-1-b

OSEP Data Report	E-1-a: Provision of Transition Services prior to 10-1-99 for students ages 14 and 15, requiring a statement of the transition service needs of the student	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students (ages 14 and 15) prior to 10/1/99, whose IEPs do not contain a statement of transition service needs. This number should be the number carried over from Column #5 in the previous reporting period.

Column #3: Record the total number of students from Column #2 whose IEPs were revised to include a statement of transition service needs during this reporting period.

Column #4: Record the total number of students in Column #2 who turned age 16 during this reporting period.

Column #5: Record the total number of 14 and 15 year old students still requiring a statement of transition service needs in their IEP. This number should be carried over to Column #2 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	Total # of students, ages 14 & 15 prior to 10/1/99, whose IEP docs not contain a statement of transition service needs [carryover # from Col. #5]	Total # of students from Column #2 whose IEPs were revised to include a statement of transition service needs during this reporting period	Total # of students in Column# 2 who turned 16 years old during this reporting period	Total # of 14-15 year olds still requiring a statement of transition service needs in their IEP [carryover # to Col.#2]
10/1/99-12/31/99				
1/1/00-3/31/00				
4/1/00-6/30/00				
7/1/00-9/30/00				
10/1/00-12/31/00				
1/1/01-3/31/01				
4/1/01-6/30/01				
7/1/01-9/30/01				
10/1/01-12/31/01				
1/1/02-3/30/02				
4/1/02-6/30/02				
7/1/02-9/30/02				

OSEP Data Report	E-1-b: Provision of Transition Services prior to 10-1-99 for students ages 16 and older, requiring a statement of needed transition services	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students ages 16 and older, prior to 10-1-99 requiring a statement of needed transition services and/or not receiving needed transition services. For reporting periods after (10/1/99-12/31/99), this number should be carried over from Column #5.

Column #3: Record the total number of students from Column #2 whose IEPs were revised to include a statement of needed transition services and are receiving needed transition services during this reporting period.

Column #4: Record the total number of students from Column #2 who became ineligible special education and related services under Part B of IDEA due to age or graduation during this reporting period.

Column #5: Record the total number of students age 16 and older, prior to 10-1-99 requiring a statement of needed transition services and/or not receiving needed transition services during this reporting period. This number should be the combined number from Column #3 and Column #4, subtracted from Column #2. Carry the total number over to Column #2 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	Total # of students 16 years and older, prior to 10-1-99, requiring a statement of needed transition services and/or not receiving needed transition services [carryover from Col. # 5]	Total # of students from Col. #2 whose IEPs were revised to include a statement of needed transition services and are receiving needed transition services during this reporting period	Total # of students from Col. # 2 who became ineligible under Part B of IDEA due to age or graduation during this reporting period	Total # of students 16 years and older, prior to 10-1-99, requiring a statement of needed transition services and/or not receiving needed transition services during this reporting period (Col. # 2 - (Col. # 3 + Col. # 4) = Col. # 5) [carryover # to Col.#2]
10/1/99-12/31/99				
1/1/00-3/31/00				
4/1/00-6/30/00				
7/1/00-9/30/00				
10/1/00-12/31/00				
1/1/01-3/31/01				
4/1/01-6/30/01				
7/1/01-9/30/01				
10/1/01-12/31/01				
1/1/02-3/30/02				
4/1/02-6/30/02				
7/1/02-9/30/02				

OSEP Data Report	E-2-a: Provision of Transition Services after 10-1-99 for students ages 14 and 15, requiring a statement of the transition service needs of the student	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students (ages 14 and 15) after 10/1/99, from the prior reporting period whose IEPs do not contain a statement of transition service needs. After the first reporting period, this number should be the number carried over from Column #6.

Column #3: Record the total number of additional students (ages 14 and 15) whose IEPs do not contain a statement of transition service needs.

Column #4: Record the total combined number of students from Columns #2 and #3 whose IEPs were revised to include a statemetn of transition service needs during this reporitng period.

Column #5: Record the total combined number of students in Columns #2 and #3 who turned 16 years old during this reporitng period.

Column #6: Record the total number of 14 and 15 year old students still reuiring a statement of transition service needs in their IEPs. Add Column #4 and Column #5. Subtract this number from the total in Column #2 and #3. This final number should be carried over to Column #2 in the next reporting period..

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reporting Period	Total # of students, ages 14 & 15 after 10/1/99, from the prior reporting period whose IEP does not contain a statement of transition service needs [carryover # from Column #6]	Total # of additional students, ages 14 & 15, whose IEP does not contain a statement of transition service needs	Total # of students from Columns #2 and #3 whose IEPs were revised to include a statement of transition service needs during this reporting period	Total # of students in Columns # 2 and #3 who turned 16 years old during this reporting period	Total # of 14-15 year olds still requiring a statement of transition service needs in their IEP ((Column #2 + Column #3) - (Column #4 + Column # 5) = Column # 6) [carryover # to Column #2]
10/1/99-12/31/99					
1/1/00-3/31/00					
,4/1/00-6/30/00					
7/1/00-9/30/00					
10/1/00-12/31/00					
1/1/01-3/31/01					
4/1/01-6/30/01					
7/1/01-9/30/01					
10/1/01-12/31/01					
1/1/02-3/30/02					
4/1/02-6/30/02					
7/1/02-9/30/02					

OSEP Data Report	E-2-b: Provision of Transition Services after 10-1-99 for students ages 16 and older, requiring a statement of needed transition services	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of students ages 16 and older, after 10-1-99, from prior reporting period requiring a statement of needed transition services and/or not receiving needed transition services as of the beginning of this reporting period. After the first reporting period (10/1/99-12/31/99), this number should be the number carried over from Column #5 of the previous reporting period.

Column #3: Record the total number of additional students ages 16 and older, requiring a statement of needed transition services and/or not receiving the needed transition services during this reporting period.

Column #4: Record the total number of students from the combined number (obtained by adding Column #2 and Column #3) whose IEPs were revised to include a statement of needed transition services and are receiving needed transition services as of the end of this reporting period.

Column #5: Record the total number of students from Column #2 who became ineligible for special education and related services under Part B of the IDEA due to age or graduation during this reporting period.

Column #6: Record the total number of students ages 16 and older prior to 10-1-99 requiring a statement of needed transition services and/or not receiving needed transition services during this reporting period as of the as of the end of this reporting period. To obtain this number, add Column #3 and Column #4. Subtract this number from Column #2. The final number should be carried over to Column #2 in the next reporting period.

Column 1	Column #2	Column 3	Column 4	Column 5	Column 6
Reporting Period	Total # of students 16 years and older, after 10-1-99, from prior reporting period requiring a statement of needed transition services and/or not receiving needed transition services as of the beginning of this reporting period [carryover from Columns# 5]	Total # of additional students 16 years and older, requiring a statement of needed transition services and/or not receiving needed transition services during this reporting period	Total # of students from Columns #2 and # 3 whose IEPs were revised to include a statement of needed transition services and are receiving needed transition services as of the end of this reporting period	Total # of students from Column. # 2 who became ineligible under Part B of IDEA due to age or graduation during this reporting period	Total # of students 16 years and older, prior to 10-1-99, requiring a statement of needed transition services and/or not receiving needed transition services during this reporting period as of the end of this reporting period (Column # 2 - (Column # 3 + Column # 4) = Column # 5) [carryover # to Column #2]
10/1/99-12/31/99					
1/1/00-3/31/00					
4/1/00-6/30/00					
7/1/00-9/30/00					
10/1/00-12/31/00					
1/1/01-3/31/01					
4/1/01-6/30/01					
7/1/01-9/30/01					
10/1/01-12/31/01					
1/1/02-3/30/02					
4/1/02-6/30/02					
7/1/02-9/30/02					

U.S. Department of Education Compliance Agreement Data Report: E-2-b

OSEP Data Report	F-1: Personnel Vacancies	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of personnel vacancies as of 10-1-99 that are still vacant at the beginning of the reporting period. For the second reporting period (4/1/00-6/30/ 00) this number should be carried over from Column #4 of the previous reporting period.

Column #3: Record the total number of personnel vacancies (by category) filled during this reporting period.

Column #4: Record the total number of personnel vacancies (by category) as of 10-1-99 that remain vacant as of the end of the reporting period. This number should be obtained by subtracting the number in Column #3 from Column #2. This number should be carried over to Column #2 in the next reporting period.

Column #5: Record the total number of personnel vacancies (by category) from the prior reporting period that remain vacant. This number should be carried over from Column #8 in the previous reporting period.

Column #6: Record the total number of new personnel vacancies (by category) during this reporting period.

Column #7: Record the total number of personnel vacancies (by category) in the combined total number (Column #5 and Column #6) filled during this reporting period.

Column #8: Record the total number of new personnel vacancies (by category) still not filled as of the end of this reporting period. This number should be obtained by subtracting Column #7 from the combined number obtained by adding Column # 5 and #6. This number should be carried over to Column #5 in the next reporting period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
10/1/99-12/31/99	Administrators	Administrators	Administrators	Administrators 0	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers 0	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services 0	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals 0	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff 0	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers 0	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators 0	Mediators	Mediators	Mediators
	Other	Other	Other	Other 0	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: F-1

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
4/1/00-6/30/00	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: F-1

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
7/1/00-9/30/00	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other
10/1/00-12/31/00	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
1/1/01-3/31/01	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other
4/1/01-6/30/01	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: F-1

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
7/1/01-9/30/01	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other
10/1/01-12/31/01	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: F-1

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of personnel vacancies as of 10-1-99 and still vacant at the beginning of the reporting period [carryover # from Col. #4]	Total # personnel vacancies by category filled during the reporting period	Total # of personnel vacancies by category as of 10-1-99 and still vacant as of the end of reporting period (Column. #2 - Column #3 = Column #4) [carryover to Column #2]	Total # personnel vacancies by category from prior reporting period still vacant [carryover # from Column # 8]	Total # of new personnel vacancies by category during the reporting period	Total # of personnel vacancies by category in Columns #5 + #6 filled during the reporting period	Total # of new personnel vacancies by category not filled as of the end of reporting period ((Column # 5 + Column #6) - Column #7 = Column # 8) [carryover # to Column #5]
1/1/02-3/30/02	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other
4/1/02-6/30/02	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators	Administrators
	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers	Teachers
	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services	Related Services
	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals	Paraprofessionals
	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff	Evaluation Staff
	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers	Hearing Officers
	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators	Mediators
	Other	Other	Other	Other	Other	Other	Other

U.S. Department of Education Compliance Agreement Data Report: F-1

OSEP Data Report	G-1: Due Process Hearings	District: ( ) St. Croix ( ) St. Thomas ( ) St. John

Name of Person Completing Report: _____ **Position/Title:** _____
(Please Print)

Signature of Person Completing Report: _____ **Date Signed:** _____

My signature certifies and attests that the information contained in this report is accurate and complete to the best of my knowledge. I also understand that this report is submitted to the United States Department of Education as part of a compliance agreement and that any misrepresentations may be punishable by law.

DIRECTIONS

Column #1: Reporting Period

Column #2: Record the total number of due process decisions requested prior to 10-1-99 that have not been completed as of the beginning of this reporting period. This number should be the number carried over from Column #4 of the previous reporting period.

Column #3: Record the total number of due process decisions issued during the reporting period from Column #2.

Column #4: Record the total number of due process decisions (reported in Column #2 of the previous period) that have not been completed as of the beginning of this reporting period. This number should have been carried over from Column #4 in the previous reporting period.

Column #5: Record the total number of due process decisions that have not been issued from the prior reporting period. This number should be carried over from Column #8 of the previous reporting period.

Column #6: Record the total number of due process decisions that became due during this reporting period.

Column #7: Record the total number of due process decisions that were issued during this reporting period. This number should be the combined total from Column #5 and #6 of the previous reporting period.

Column #8: Record the total number of due process decisions (due after 10-1-99) that were not issued as of the end of this reporting period. This number should be obtained by subtracting the number in Column #7 from the combined total of Columns #5 and #6.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Reporting Period	Total # of due process decisions prior to 10/1/99 and have not been completed as of the beginning of this reporting period [carryover # from Column #4]	Total # of due process decisions from Column #2 issued during reporting period	Total # of due process decisions from Column #2 not completed as of the end of this reporting period (Column # 2 - Column # 3 = Column #4) [carryover # to Column #2]	Total # of due process decisions from the prior reporting period that have not been issued [carryover # from Column #8]	Total # of due process decisions that became due during this reporting period	Total # of due process decisions from Columns #5 & #6 that were issued during this reporting period	Total # of due process decisions due after 10/1/99 that were not issued as of the end of this reporting period ((Column #5 + Column #6) - Column #7 = Column # 8))
10/1/99-12/31/99	**15**			**0**			
1/1/00-3/31/00							
4/1/00-6/30/00							
7/1/00-9/30/00							
10/1/00-12/31/00							
1/1/01-3/31/01							
4/1/01-6/30/01							
7/1/01-9/30/01							
10/1/01-12/31/01							
1/1/02-3/30/02							
4/1/02-6/30/02							
7/1/02-9/30/02							

U.S. Department of Education Compliance Agreement Data Report: G-1

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[FR Doc. 00–4085 Filed 2–22–00; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
February 23, 2000

Part V

Department of Education

List of Correspondence—Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of Correspondence from January 4, 1999 through March 31, 1999.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between January 4, 1999 and March 31, 1999.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Other Health Impairment

• Letter dated February 12, 1999 to individuals (personally identifiable information redacted), regarding possible eligibility of children with multiple chemical sensitivity disorder for services under Part B of IDEA under the ''other health impairment'' category and the responsibility of the individualized education program team to determine what accommodations would be appropriate for eligible children.

Topic Addressed: Special Education and Rated Services

• Letter dated March 11, 1999 to Massachusetts Speech-Language-Hearing Association President Robert Gilmore and School Affairs Committee Member Karen L. Grossman, regarding a State's ability to consider speech-language pathology services as either special education or a related service and to consider any related service as special education if doing so would be consistent with applicable State education standards and the State's discretionary authority in establishing those standards.

• Letter dated March 23, 1999 to Vice President of National Board for Professional Teaching Standards Sally Mernissi, regarding the importance of physical education in educating students with disabilities and comments on draft standards for physical education teachers.

Section 607—Requirements for Prescribing Regulations

Topic Addressed: Applicability of Regulations

• Letter dated March 30, 1999 to U.S. Congressman Jerry Moran, regarding regulations that were applicable pending the March 12, 1999 publication of final regulations implementing the IDEA Amendments of 1997.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Availability of Subgrant Funds to Local Educational Agencies

• Letter dated March 30, 1999 to Mr. David Tokofsky, Los Angeles Board of Education regarding States' requirement to reserve certain excess funds for LEA subgrants under section 611(f)(4)(A) of the IDEA Amendments of 1997 and responding to inquiries regarding audit process under Single Audit Act of 1984, as amended in 1986.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

• Letter dated January 13, 1999 to U.S. Senator Dianne Feinstein, regarding State and local school district responsibility to ensure the provision of a free appropriate public education and increased opportunities for parent participation in a child's evaluation, eligibility, and educational placement, but clarifying that IDEA does not automatically require inter-district transfers requested by parents.

Topic Addressed: Confidentiality

• Letter dated February 26, 1999 to individual (personally identifiable information redacted), from Family Policy Compliance Office Director LeRoy S Rooker, regarding the Family Educational Rights and Privacy Act (FERPA) and FERPA's applicability to Part B of IDEA and to education records of students with disabilities, and clarifying that there is no requirement in FERPA that a State establish a procedure for the destruction of records or inform parents of the State's intention to destroy such records when no longer needed.

Topic Addressed: Payment for Education of Children Enrolled in Private Schools Without Consent of or Referral by the Public Agency

• Letter dated March 19, 1999 to Educational Consultant and Advocate Susan Luger, regarding the absence of any provision in Part B of IDEA that makes a child's prior receipt of special education and related services from a public agency a prerequisite to a parent's obtaining tuition reimbursement from a hearing officer or court for the cost of a unilateral private school placement.

Topic Addressed: State Educational Agency General Supervisory Responsibility

• Letter dated March 11, 1999 to individual (personally identifiable information redacted), regarding required procedures for handling complaints that are also the subject of pending due process hearings under Part B of IDEA.

Topic Addressed: Maintenance of Effort

• Letter dated January 7, 1999 to Alaska Department of Education Commissioner Shirley J. Holloway, regarding State and local maintenance of effort requirements in the IDEA Amendments of 1997 and how those requirements are applied in light of criteria in Alaska's funding formula.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

• Letter dated February 24, 1999 to U.S. House of Representatives Education and Work Force Committee Chairman William Goodling, regarding provisions in the IDEA Amendments of 1997 that decrease unnecessary paperwork requirements and clarifying that some of the paperwork requirements resulting from the Act's individualized education program requirements apply only to specific groups of children.

Section 615—Procedural Safeguards

Topic Addressed: Finality of Due Process Hearing Decisions

• Letter dated February 26, 1999 to Chief Counsel David Anderson, Texas Education Agency, regarding Texas' responsibility to implement Texas law in a manner that ensures the timely implementation of due process hearing decisions.

Topic Addressed: Prior Written Notice

• Letter dated March 4, 1999 to individual (personally identifiable information redacted), regarding the State and local educational agencies' responsibility to locate, identify, and evaluate children suspected of having disabilities under Part B of IDEA and to provide parents with prior written notice regarding the agency's refusal to evaluate the child to determine eligibility for services under Part B of IDEA or to change the child's educational program.

Topic Addressed: Student Discipline

• Letter dated February 5, 1999 to Prince William County, Virginia School Board Chairman At-Large Lucy S. Beauchamp, regarding options available to school authorities in disciplining students with disabilities who bring weapons to school.

Durbin, regarding options available to school authorities in disciplining a student with a disability in possession of a weapon at school when school authorities and parents cannot reach agreement on an appropriate placement for the student.

• Letter dated March 30, 1999 to U.S. Senator Ted Stevens, regarding provisions in the IDEA Amendments of 1997 authorizing school personnel and hearing officers to place certain disabled students in an appropriate interim alternative educational setting for up to 45 days and the availability of Part B of IDEA funds to assist school districts in financing the costs of such placements.

Part C—Infants and Toddlers With Disabilities

Sections 631–641

Topic Addressed: Availability of Federal Impact Aid

• Memorandum dated February 2, 1999 to Part C Lead Agency Directors and State Representatives for Impact Aid, from former director of the Office of Special Education Programs Thomas Hehir and Impact Aid Program Director Catherine Schagh, regarding the availability of Federal Impact Aid for local educational agencies serving federally-connected infants and toddlers with disabilities (specifically including dependents of uniformed service members and those living on Indian lands) who are eligible for services under Part C of IDEA and the criteria for obtaining and using such funds.

Electronic Access to This Document

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–800–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Dated: February 17, 2000.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–4258 Filed 2–22–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
February 23, 2000

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years (FY) 2000–2001 for Rehabilitation Research and Training Centers (RRTCs); Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years (FY) 2000–2001 for Rehabilitation Research and Training Centers (RRTCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes funding priorities for three Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for FY 2000–2001. This notice contains proposed priorities for one RRTC related to rehabilitation for persons with long-term mental illness and two RRTCs related to independent living. The Assistant Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities. The proposed priorities refer to NIDRR's Long Range Plan (the Plan). The plan can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.htm

DATES: Comments must be received on or before March 24, 2000.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: Donna__Nangle@ed.gov

You must include the term ''Disability and Rehabilitation Research Projects and Centers'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities that we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3414, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764). Regulations governing this program are found in 34 CFR part 350.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use any of these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

Rehabilitation Research and Training Centers

The authority for the RRTC program is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training. The Assistant Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities,

and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed Priority 1: Long-term Mental Illness

Background

The Surgeon General estimates that approximately 20 percent of the U.S. population experience a mental disorder in any given year, that 9 percent of the adult population have a diagnosable major mental illness, and that a subpopulation of 5.4 percent of the population is considered to have a significant mental illness (Kessler, *et. al.* 1994, 1996). The costs to society of mental illness are substantial. The indirect costs of mental illness in 1990, stemming from lost productivity at work, school, or home, were estimated at $78.6 billion (Rice and Miller, 1996). As the population grows, the needs of a growing number of individuals with a significant mental illness are not being met. Only one in four adults with a diagnosable mental disorder receives treatment and one third of children and adolescents needing mental health services are treated (Manderscheid & Henderson, 1998). The lives of individuals with long-term mental illnesses are complicated by inadequate community resources, lack of access to new medications and psychosocial treatments, unemployment, and lack of options for long-term care. Many individuals also experience homelessness, family disruptions, chronic medical conditions, alcohol and substance abuse, incarceration, and social isolation, as well as the potential for periodic exacerbation.

Quality is an important factor in the delivery of effective mental health services. Defining quality services is not an easy task, nor is there ready consensus on all components of the concept. The Institute of Medicine states that quality of services is ''the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge'' (Marder, 1999). However, measuring the quality of services provided to individuals with significant mental illness, as well as measuring outcomes, present numerous challenges because of the periodic and chronic nature of the illness, and the ongoing need for intensive therapeutic services and long-term support. Practitioners, policy makers, and consumers continue to ask questions about how to adequately meet the multifaceted needs of individuals with significant mental illness.

Generally, family members and consumers want community-based support services and treatment programs that are accessible and designed to meet long-term needs. The potential for individuals with serious mental illness to be maintained in the community rather than in institutions, work productively, live independently, and participate in rehabilitation planning is increased when a comprehensive support system is available in community settings. Research on consumer participation and community-based programs has provided evidence that there is a positive relationship between the level of consumer participation and therapeutic outcomes (Kent & Read, 1998).

Proponents of community-based service programs and support systems long have advocated that consumers be empowered to participate in the decisionmaking process. However, one reason individuals with disabilities have limited opportunities to participate in decisions about their services are related to the lack of consensus on a definition for self-determination. Self-determination is defined and implemented differently (Ward, 1999) depending on the program, philosophy, and purposes for implementing a self-determination model. However, there are some common concepts in the definitions for self-determination; NIDRR includes factors such as consumer control, choice, self-direction, empowerment, leadership, and self-advocacy (Ward & Roger, 1999) as potential elements of self-direction. While most mental health professionals support the concept of self-determination, not all agree that individuals with psychiatric disabilities should have control over or participate in planning and decisionmaking activities (Kent & Read, 1998).

Individuals with psychiatric disabilities are not yet full participants in the disability self-determination movement. It is widely alleged that professionals in the psychiatric disabilities community continue to use medical compliance as a control mechanism and as a determining factor for awarding patients certain privileges. The right to choose among treatment options is often regarded as a privilege that is earned through medical compliance (Chamberlain & Powers, 1999).

Obstacles to the development and implementation of self-determination efforts include controversy over whether severe mental illness is a lifelong process or whether recovery is possible. Some discussants of this issue suggest that the need for extensive, lifelong support and the severity of the illness preclude using a self-determination approach. In addition, the impact of self-determination approaches on quality of services are unknown. Methodologies, indicators, and standards for measuring quality of care within self-determination models would facilitate understanding the impact of this approach on rehabilitation outcomes. In particular, research that addresses questions about the ability of individuals with serious mental illnesses to make decisions about treatment and medication management is lacking. Traditionally, program planning and treatment decisions in the mental health field have been made by clinicians, and often involve maintaining patients on medication without consumer input or choice.

Policies and service systems tend to be based on a paternalistic model that restricts consumer control and input. However, there is evidence that consumer and family involvement in decisionmaking and program planning have the potential to foster higher quality services and responsiveness from providers. The effectiveness service models incorporating self-determination and their relationship to rehabilitation outcomes has not been evaluated. There has not been adequate study of the impact of elements of self-determination models on the rehabilitation process. Similarly, there have not been adequate studies of the impact of the various components of self-determination models on the rehabilitation process.

Better understanding of the implications of self-determination for rehabilitation outcomes potentially will answer questions related to competency, patient rights, recovery, outcomes, and policies. Research addressing these issues, describing standards for quality, and establishing outcome measures for consumer driven decisions is lacking in the research literature. Studies evaluating self-determination will potentially further the understanding of the rehabilitation process for individuals with significant mental illness, and identify strengths, weaknesses, and needed improvements in the existing models.

The Plan emphasizes the importance of independent living and community integration. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life. These activities include making decisions involved in managing one's own life, sustaining the ability and opportunity to make choices in performing everyday activities, and minimizing physical and psychological dependence on others. Independent living is a concept that also emphasizes participation and equity in the right to share in the opportunities, risks, and rewards available to all citizens.

Proposed Priority 1: Improving Service and Supports for Individuals with Long-Term Mental Illness

The Assistant Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, proposes to establish an RRTC for the purpose of improving services and supports for individuals with long-term mental illness. In carrying out these purposes, the Center must:

(1) Develop measures that can be applied to evaluate self-determination activities in terms of rehabilitation outcomes, quality of services, and availability of community resources;

(2) Identify and assess self-determination direction theories, models, and activities, as well as the barriers to participation in self-determination activities for individuals with disabilities;

(3) Develop and evaluate management tools to enable service providers to support self-determination;

(4) Develop, conduct, and evaluate, training on self-determination and consumer choice to improve understanding and support of self-determination; and

(5) Assess policies of service providers and payers in terms of their implications for fostering or impeding self-determination, and identify strategies for policy improvements.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

(1) Conduct in the third year of the grant, a state-of the-science conference on self-determination for persons with significant and persistent mental illness and publish a comprehensive report in the fourth year of the grant; and

(2) Address in its research the specific needs of minority populations with LTMI.

Two Proposed Priorities on Independent Living

Background

The mission of NIDRR emphasizes developing knowledge that will ''improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled the Plan, published on December 7, 1999 (64 FR 68575)).'' Much of NIDRR's work reflects the components of the Independent Living (IL) philosophy: consumer control, self-help, advocacy, peer relationships and peer role models, and equal access to society, programs, and activities. NIDRR has funded subject-specific RRTCs in IL since 1980 and supports other projects that incorporate principles of IL.

Most recently, NIDRR has funded one RRTC on Centers for Independent Living (CIL) management and services and a second on IL and disability policy. The last year of the five-year project period for the awards was 1999. In light of the research agenda established in the Plan, and input obtained from the Rehabilitation Services Administration (RSA) and other Federal agencies and constituents, in various meetings that addressed related themes, NIDRR has identified critical issues in independent living to be addressed at this time. There is a continuing need to fund two Centers that study independent living and community integration.

Living independently and achieving community integration to the maximum extent possible are issues at the crux of NIDRR's mission. NIDRR is committed to the creation of a theoretical framework with measurable outcomes that is based upon the experiences of individuals with disabilities. The new paradigm of disability embodied in the Plan requires analysis of the extent to which socioenvironmental factors help or hinder individuals with disabilities in attaining full participation in society. Questions as basic as defining independent living in the context of diverse socioeconomic factors must be addressed. Current challenges to independent living derive from the changing characteristics of both the IL service system and the disability population.

Substantial administrative, advocacy, strategic and service-delivery issues affect the daily activities of Centers for Independent Living (CILs). Critical issues include funding and resource management, quality staffing, and relationships with other agencies key to the success of CILs. The issue of financial management of CILs calls for a balanced approach to identify existing policies, regulations, models, and programs that serve to hinder or help in establishing sound fiscal operation. Financial management requires expertise in fiscal analysis, budgeting, understanding grant requirements and program rules, accounting, auditing, and fundraising.

CILs, which spend substantial amounts of money on personnel, are subject to staffing problems typical of human service organizations and small businesses, including recruitment problems, training and competency development, and retention problems. Staffing problems may impede the ability of CILs to deliver individualized information and support services. An essential step in strengthening continuity in services is to recruit, train, and retain first line managers.

CILs lack documentation of the competencies required for IL management. Awareness of competency needs is key to developing successful recruitment strategies and staff development programs. For example, innovative recruitment strategies are needed to attract youth with disabilities who are transitioning from school to independent living to work in CIL service programs. Creative efforts to attract young persons entering the job market as employees could assist the CILs in understanding the needs of youth with disabilities as consumers as well. Career development, with pathways to more responsible positions in CILs, can be a key to the retention of competent staff.

CILs exist in a framework of public agencies, nonprofit organizations, and the local business sectors. The ability to form effective partnerships and cooperative working relationships with appropriate entities is essential to successful CIL operation. Historically, relationships with State Vocational Rehabilitation agencies, Statewide

Independent Living Councils, and State Consumer Advocacy Organizations have been at the heart of CIL operations and responsibilities. Recent developments in the area of employment services and entitlement benefits for individuals with disabilities pose additional challenges for CILs by introducing new actors, new clients, and new rules. Passage of the Workforce Investment Act of 1998 and the Work Incentives Improvement Act of 1999 might provide new opportunities for CILs to play a role in the process of vocational rehabilitation.

A challenge to facilitating independent living and community integration is the changing universe of disability. Demographic, social and environmental trends affect the prevalence and distribution of various types of disability as well as the demands of those disabilities on social policy and service systems. Within the universe of disabilities are: (1) changing etiologies for existing disabilities; (2) growth in segments of the population with higher prevalence rates for certain disabilities; (3) the consequences of changes in public policy and in health care services and technologies; and (4) the appearance of new disabilities.

The CILs and consumer organizations can prepare to address changing needs of diverse populations with attention to the infrastructure of resource availability and management strategy. At the same time, there is a need to frame the history and role of the independent living movement within the context of theories of society and social movements and organizational and group structure. Such a framework could identify ways to: (1) reach out to underserved populations, (2) collaborate with key organizations that might not be perceived as traditional disability advocates, and (3) recognize the role of environmental factors on successfully living independently and achieving community integration. A sound theoretical base can be drawn upon to develop policy and service-delivery models that can help maximize social participation for individuals with disabilities.

Researchers have identified an association between disabilities and poverty, especially among youth (Fujiura G et al., ''Disability Among Ethnic and Racial Minorities in the United States,'' *Journal of Disability Policy Studies*, Vol. 9, No. 2, pgs. 112–130, 1998). The growing number of individuals aging with long-standing disabilities, as well as the increase in the population of older persons who acquire disabilities as they age, is another aspect of a changing disability population. Newer etiologies of disability, such as HIV/AIDS, multiple chemical sensitivity and environmental illness, challenge IL concepts, services, and research. CILs and other organizations can serve as a resource to teach youth, aging persons, and underserved populations about independent living. There may be an opportunity for CILs to develop strong alliances with parent information training centers and schools (from pre-school through postsecondary programs) and with the aging and underserved populations through appropriate partnerships.

As an example of the role of demographic factors, disability has a disproportionate impact upon African Americans, Hispanic Americans, and American Indians. An array of culturally-sensitive service-delivery models, community organizations, and other resources is necessary to provide services to individuals from minority backgrounds. Organizations with grassroots orientations, including CILs, are in a unique position to help identify the specific needs of individuals from those affected populations. Model strategies in other countries might be adapted to reach unserved and underserved populations in the United States.

Physical environment, including the built environment, can pose numerous obstacles that confound living independently. Individuals with disabilities living in rural communities may be isolated from CILs and vocational rehabilitation services. Isolation resulting from distance, lack of available transportation, lack of monetary resources to support social services, limited job opportunities, lack of a health care delivery system, and unavailability of accessible and affordable housing can be problems for rural Americans. Similar problems may confront persons from minority backgrounds in inner cities and remote areas, persons who are homeless, and migrants. For all populations, and for all salient issues that affect independent living and community integration, the social and economic costs and benefits of various strategies must be evaluated.

The Plan discusses research on physical inclusion, including the identification and evaluation of models that facilitate housing that are consistent with consumer choice. In addition to physical and economic accessibility, model housing approaches must maximize community integration and ability to participate in a range of normative activities.

Proposed Priority 2: Improved Management of CIL Programs and Services

The Assistant Secretary proposes to establish an RRTC on IL management, services and strategies that will conduct research and training activities and develop and evaluate model approaches to enhance the capacity of CILs to operate and manage effective advocacy and service programs and maintain effective external partnerships. In carrying out this purpose, the Center must:

(1) Develop a database of existing CIL funding and economic resources, and identify innovative and best practices in creating secure economic foundations for CILs;

(2) Working in collaboration with appropriate entities, design and test several options for generating funding from alternative sources, including business development strategies and analyze policy-related and programmatic consequences of various funding options, especially those independent of public financing;

(3) Identify best practices and develop and test programs for CILs in expanding services to youth with disabilities and their families, including those from diverse cultural backgrounds, and in interfacing with education and transition programs to prepare children and youth for independent living;

(4) Develop and test strategies to enable CILs to benefit from management models of other successful community-based organization or organizations. Develop and test innovative models of cost-effective training to improve core competency skills in geographically dispersed and culturally and linguistically diverse CIL staff, including but not limited to those from Indian tribes and tribal organizations, and evaluate strategies for improved recruitment and retention of CIL staff from diverse backgrounds;

(5) Review CIL and vocational rehabilitation agency policies related to collaborations, and design strategies for innovative partnerships to promote employment outcomes for individuals with disabilities;

(6) Coordinate activities with and provide instruments, curricula, methodologies, and resource guides, as well as research findings, including but not necessarily limited to distance learning and web-based technologies, to the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act; and

(7) Provide training and information for CILs, policy makers, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the Center must coordinate with other NIDRR and OSERS grantees and community-based organizations that focus upon independent living and with the National Center for the Dissemination of Disability Research. The RRTC on improved management of CIL programs and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance, and transition assistance to CILs and Statewide Independent Living Councils under Part C of Title VII of the Rehabilitation Act.

Proposed Priority 3: IL and the New Paradigm of Disability

The Assistant Secretary proposes to establish an RRTC on IL and the New Paradigm of Disability that will facilitate the development of innovative independent living strategies to meet the challenges of the 21st century. This Center will promote an understanding of independent living concepts and practices in the context of the physical and social environments noted in the new paradigm of disability, including assessment of the application of independent living to the changing universe of disability. In carrying out these purposes, the Center must:

(1) Develop an analytical framework for research on living independently that incorporates the definition of IL, the contextual framework of disability and an accessible community, and the changing universe of disability as articulated in the Plan, and is grounded in social science theory and methods;

(2) Identify and evaluate strategies to promote accessible cost-effective advocacy and generic community services for individuals with significant disabilities, and address specifically at least one changing universe population;

(3) Evaluate the use of peer networks and communication channels to assist individuals with disabilities to maintain wellness, access community services, and participate in community life;

(4) Assess the concept and application of independent living for diverse populations of cultural and linguistic minorities, including but not limited to those from Indian tribes and tribal organizations, and identify and evaluate culturally appropriate independent living approaches and strategies to assist individuals within these groups to attain self-determined independent living goals; and

(5) Provide training and information for CILs, policy makers, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the project must coordinate with other NIDRR and OSERS grantees and community-based organizations that focus on independent living, the Center on Emergent Disability, the National Center for the Dissemination of Disability Research, and the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act.

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

Electronic Access to This Document.

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: February 17, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–4259 Filed 2–22–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
February 23, 2000

Part VII

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 991210330–0034–02]

RIN 0660–ZA10

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. An announcement regarding the submission of applications for the Public Telecommunications Facilities Program (PTFP) which is also funded from this account, was published in the **Federal Register** on December 23, 1999.

Applicants for grants for the PEACESAT Program must file their applications on or before March 29, 2000. NTIA anticipates making the grant award by September 30, 2000. NTIA shall not be liable for any proposal preparation costs.

DATES: Applications for the PEACESAT Program grant must be received on or before 5:00 p.m. on March 29, 2000. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. The security office is located in Room 1874, located at Entrance No. 10 on the 15th St. N.W. side of the building.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Public Law 106–113, the ''Consolidated Appropriations Act, Fiscal Year 2000.'' Public Law 106–113 provides that ''notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds.'' The PEACESAT Program was authorized under Public Law 100–584 (102 Stat. 2970) and also Public Law 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 106–113 appropriated $26.5 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. The solicitation notice for the PTFP Program was published in the **Federal Register** on December 23, 1999 (64 Fed. Reg. 72225). Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the December 23, 1999 Notice and are exempt from the PTFP regulations at 15 CFR Part 2301. NTIA anticipates making a single award for approximately $450,000 for the PEACESAT Program in FY2000.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one(1) original and two (2) copies of the application. The application form consists of the Standard Form 424 Application for Federal Assistance; Standard Form 424A Budget Information—Non-Construction Programs; Standard Form 424 B, Assurances; Standard Form CD–511 Certification; and Standard Form LLL, Disclosure of Lobbying Activities (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Applicants are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the December 23, 1999 Notice regarding the PTFP Program.

II. Administrative Requirements; Scope of Project and Eligible Costs; Evaluation and Selection Process

Public Law 106–113 was enacted November 29, 1999. Public Law 106–113 made funds from the Public Broadcasting, Facilities, Planning and Construction Funds account available to the PEACESAT Program. Funds appropriated to the Public Broadcasting, Facilities, Planning and Construction Funds account do not carry fiscal year limitations. A notice published on March 16, 1999 set forth the scope of the project and eligible costs, and a description of the evaluation and selection process for applications. Since funds for the Public Broadcasting, Facilities, Planning and Construction Funds account are available without limitations, the administrative requirements; scope of project and eligible costs criteria; and evaluation and selection process criteria set forth in the March 16, 1999 notice apply to the 1999 PEACESAT program and to all subsequent years. A copy of the March 16,1999 Notice is available to potential applicants from NTIA at the address listed in the Address section and is also available on the INTERNET at *www.ntia.doc.gov/otiahome/peacesat/peacesat.html* If, in the future, NTIA changes the administrative requirements; the scope of project and eligible costs criteria; or the evaluation and selection process criteria, a new

notice will be published containing the new criteria and requirements.

III. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

Authority: Pub. L. 106–113, ''Consolidated Appropriations Act, Fiscal Year 2000.''

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 00–4206 Filed 2–22–00; 8:45 am]

BILLING CODE 3510–60–P

Federal Register

Wednesday,
February 23, 2000

Part VIII

The President

Proclamation 7274—To Facilitate Positive Adjustment to Competition From Imports of Certain Circular Welded Carbon Quality Line Pipe

Memorandum of February 18, 2000—Action Under Section 203 of the Trade Act of 1974 Concerning Line Pipe

Federal Register
Vol. 65, No. 36
Wednesday, February 23, 2000

Presidential Documents

Title 3—

Proclamation 7274 of February 18, 2000

To Facilitate Positive Adjustment to Competition From Imports of Certain Circular Welded Carbon Quality Line Pipe

By the President of the United States of America

A Proclamation

1. On December 22, 1999, the United States International Trade Commission (USITC) transmitted to the President an affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2252), with respect to imports of certain circular welded carbon quality line pipe (line pipe) provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States (HTS). The USITC determined that line pipe is being imported in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing a like or directly competitive article.

2. Pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (19 U.S.C. 3371(a)), the USITC made negative findings with respect to imports of line pipe from Mexico and Canada. The USITC also transmitted to the President its recommendations made pursuant to section 202(e) of the Trade Act (19 U.S.C. 2252(e)) with respect to the action that would address the serious injury or threat thereof to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

3. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act, I have determined to implement action of a type described in section 203(a)(3). Pursuant to section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)), I have determined that imports of line pipe from Mexico, considered individually, do not contribute importantly to the serious injury, or threat of serious injury, found by the USITC, and that imports from Canada, considered individually, do not contribute importantly to such injury or threat. Accordingly, pursuant to section 312(b) of the NAFTA Implementation Act (19 U.S.C. 3372(b)), I have excluded line pipe the product of Mexico or Canada from the action I am taking under section 203 of the Trade Act.

4. Such action shall take the form of an increase in duty on imports of certain line pipe provided for in HTS subheadings 7306.10.10 and 7306.10.50, imposed for a period of 3 years plus 1 day, with the first 9,000 short tons of imports that are the product of each supplying country excluded from the increased duty during each year that this action is in effect, and with annual reductions in the rate of duty in the second and third years, as provided for in the Annex to this proclamation.

5. Except for products of Mexico and Canada, which shall be excluded from this action, the increase in duty shall apply to imports of line pipe from all countries. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have further determined that this action will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

6. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203 and 604 of the Trade Act, do proclaim that:

(1) In order to establish an increase in duty on imports of certain line pipe classified in HTS subheadings 7306.10.10 and 7306.10.50, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Such imported line pipe that is the product of Mexico or of Canada shall not be subject to the increase in duty established by this proclamation.

(3) I hereby suspend, pursuant to section 503(c)(1) of the Trade Act (19 U.S.C. 2463(c)(1)), duty-free treatment for line pipe the product of beneficiary countries under the Generalized System of Preferences (GSP) (Title V of the Trade Act, as amended (19 U.S.C. 2461–2467)); pursuant to section 213(e)(1) of the Caribbean Basin Economic Recovery Act, as amended (CBERA) (19 U.S.C. 2703(e)(1)), duty-free treatment for line pipe the product of beneficiary countries under that Act (19 U.S.C. 2701–2707); pursuant to section 204(d)(1) of the Andean Trade Preference Act, as amended (ATPA) (19 U.S.C. 3203(d)(1)), duty-free treatment for line pipe the product of beneficiary countries under that Act (19 U.S.C. 3201–3206); and pursuant to section 403(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note), duty-free treatment for line pipe the product of Israel under the United States-Israel Free Trade Area Implementation Act of 1985 (the ''IFTA Act'') (19 U.S.C. 2112 note), to the extent necessary to apply the increase in duty to those products, as specified in the Annex to this proclamation.

(4) Effective at the close of March 1, 2003, or at the close of the date that may earlier be proclaimed by the President as the termination of the import relief set forth in the Annex to this proclamation, the suspension of duty-free treatment under the GSP, the CBERA, the ATPA, and the IFTA Act shall terminate, unless otherwise provided in such later proclamation, and qualifying goods the product of beneficiary countries or of Israel entered under such programs shall again be eligible for duty-free treatment.

(5) Effective at the close of March 1, 2004, or such other date that is 1 year from the close of this relief, the U.S. note and tariff provisions established in the Annex to this proclamation shall be deleted from the HTS.

(6) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) The modifications to the HTS made by this proclamation, including the Annex hereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

Billing code 3195–01–P

ANNEX

MODIFICATIONS TO THE HARMONIZED
TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new U.S. note, subheadings and superior text thereto, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

"10. For purposes of subheadings 9903.72.20 through 9903.72.25, inclusive, except as provided in this note, the term "line pipe" shall include (notwithstanding the provisions of other legal notes to the tariff schedule) welded "carbon quality" line pipe of circular cross section, of a kind used for oil and gas pipelines, whether or not stencilled, except as provided below. The term "carbon quality" applies to products in which (i) iron predominates, by weight, over each of the other contained elements, (ii) the carbon content is 2 percent or less, by weight, and (iii) none of the elements listed below exceeds the quantity by weight, respectively indicated:

-- 1.80 percent or more of manganese, or

-- 2.25 percent of silicon, or

-- 1.00 percent of copper, or

-- 0.50 percent or less of aluminum, or

-- 1.25 percent of chromium, or

-- 0.30 percent of cobalt, or

-- 0.40 percent of lead, or

-- 1.25 percent of nickel, or

-- 0.30 percent of tungsten, or

-- 0.10 percent of molybdenum, or

-- 0.10 percent of niobium, or

-- 0.15 percent of vanadium, or

-- 0.15 percent of zirconium.

The term "line pipe" does not include goods commonly described in commercial usage as arctic grade line pipe and defined as welded line pipe that--

(a) has an outside diameter of 114.3 mm or more and a wall thickness equal to or less than 19.05 mm;

(b) when subjected to a Charpy V-notch test performed at minus 45.6 degrees Celsius or below applied to three specimens taken from the weld area, has a joules rating of no less than 23.05 joules for each sample, with an average for all three at no less than 25.76 joules;

(c) using at least three samples, has a minimum average shear area of 85 percent in the base metal and 50 percent in the weld; and

(d) when subjected to a hydrogen induced cracking test to be performed as provided by National Association of Corrosion Engineers (NACE) TM0284 test with solution A, has a crack length ratio that does not exceed 15 percent, a crack sensibility ratio that does not exceed 2 percent, and a crack thickness ratio that does not exceed 5 percent."

"	Welded line pipe of a kind used for oil or gas pipelines, of iron or steel, as defined in note 10 to this subchapter (provided for in subheadings 7306.10.10 and 7306.10.50), all the foregoing except products of Canada or of Mexico:			
	If entered during the period from March 1, 2000, through February 28, 2001, inclusive:			
9903.72.20	In aggregate quantities from each supplying country not in excess of 8,164,663 kg, the foregoing the product of such country	No change	No change	No change
9903.72.21	Other	The rate provided in the Rates of Duty 1 General subcolumn for the applicable subheading (7306.10.10 or 7306.10.50)		The rate provided in the Rates of Duty 2 column for the applicable subheading (7306.10.10 or 7306.10.50) + 29%

		+ 19%		
	[Welded...(con.):]			
	If entered during the period from March 1, 2001, through February 28, 2002, inclusive:			
9903.72.22	In aggregate quantities from each supplying country not in excess of 8,164,663 kg, the foregoing the product of such country	No change	No change	No change
9903.72.23	Other	The rate provided in the Rates of Duty 1 General subcolumn for the applicable subheading (7306.10.10 or 7306.10.50) + 15%		The rate provided in the Rates of Duty 2 column for the applicable subheading (7306.10.10 or 7306.10.50) + 25%
	If entered during the period from March 1, 2002, through March 1, 2003, inclusive:			
9903.72.24	In aggregate quantities from each supplying country not in excess of 8,164,663 kg, the foregoing the product of such country	No change	No change	No change
9903.72.25	Other	The rate provided in the Rates of Duty 1 General subcolumn for the applicable subheading (7306.10.10 or 7306.10.50) + 11%		The rate provided in the Rates of Duty 2 column for the applicable subheading (7306.10.10 or 7306.10.50) + 21%"

[FR Doc. 00–4428
Filed 2–22–00 10:50 am]
Billing code 3190–01–C

Federal Register
Vol. 65, No. 36
Wednesday, February 23, 2000

Presidential Documents

Memorandum of February 18, 2000

Action Under Section 203 of the Trade Act of 1974 Concerning Line Pipe

Memorandum for the Secretary of the Treasury [and] the United States Trade Representative

On December 22, 1999, the United States International Trade Commission (USITC) submitted a report to me that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974, as amended (the ''Trade Act''), that certain circular welded carbon quality line pipe (line pipe) is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic line pipe industry; and (2) negative findings by the USITC pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') with respect to imports of line pipe from Canada and Mexico.

After taking into account all relevant considerations, including the factors specified in section 203(a)(2) of the Trade Act, I have implemented action of a type described in section 203(a)(3) of that Act. I have determined that the most appropriate action is an increase in duty on imports of certain line pipe. The additional duty will be 19 percent *ad valorem* in the first year of relief, declining to 15 and 11 percent *ad valorem* in the second and third years, respectively. The first 9,000 short tons of imports from each supplying country will be exempted from the increase in duty during each year that the action is in effect. I have proclaimed such action for a period of 3 years and 1 day in order to facilitate efforts by the domestic industry to make a positive adjustment to import competition.

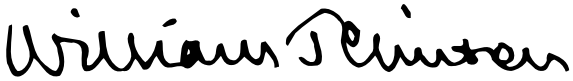
In this regard, I instruct the Secretary of the Treasury to publish or otherwise make available, on a weekly basis, import statistics that will enable importers to identify when imports from each supplying country approach and then exceed the 9,000 short ton threshold. I further instruct the Secretary of the Treasury to establish monitoring categories for those countries with American Petroleum Institute certified (API-certified) line pipe production facilities. Any importations of line pipe from a country without an API-certified line pipe production facility should be treated as line pipe subject to this action but monitored for possible transshipment. I further instruct the Secretary of the Treasury to seek to obtain by March 1, 2000, a statistical subdivision in the Harmonized Tariff Schedule for the covered products specified in the Annex to the proclamation. The Secretary of the Treasury will monitor line pipe imports that are the product of Mexico and Canada by country of origin throughout the period of this action and report to the United States Trade Representative on relevant volumes each quarter during the period of this action, or more often as needed, or as the United States Trade Representative may request.

I have determined, pursuant to section 312(a) of the NAFTA Implementation Act, that imports of line pipe produced in Canada and Mexico, considered individually, do not contribute importantly to the serious injury, or threat of serious injury. Therefore, pursuant to section 312(b) of the NAFTA Implementation Act, the safeguard measure will not apply to imports of line pipe that is the product of Canada or Mexico.

I have determined that the actions described above will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. This action will provide the domestic industry with necessary temporary relief from increasing import competition, while also assuring our trading partners continued access to the U.S. market.

Pursuant to section 204 of the Trade Act, the USITC will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, and will provide to me and to the Congress a report on the results of its monitoring no later than the date that is the mid-point of the period during which the action I have taken under section 203 of that Act is in effect. I further instruct the United States Trade Representative to request the USITC pursuant to section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), to examine the effects of this action on both the domestic line pipe industry and the principal users of line pipe in the United States, and to report on the results of its investigation in conjunction with its report under section 204(a)(2).

The United States Trade Representative is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 18, 2000.

[FR Doc. 00–4429
Filed 2–22–00; 10:50 am]
Billing code 3190–01–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Exclusions; published 2-23-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Acrylic graft copolymer; published 2-23-00
Furilazole; published 2-23-00
Zinc phosphide; published 2-23-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; published 1-19-00
Pratt & Whitney; published 1-19-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Stock transfer rules; published 1-24-00
Stock transfer rules; supplemental rules; published 1-24-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
African swine fever; disease status change—
Portugal; comments due by 2-28-00; published 12-29-99

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Official inspection and weighing services; comments due by 3-3-00; published 1-3-00
Grain inspection:
Rice; fees increase; comments due by 3-3-00; published 1-3-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Salmonids; take prohibitions; comments due by 3-3-00; published 1-3-00
West Coast salmonids; evolutionarily significant units; comments due by 3-3-00; published 1-3-00
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
American Fisheries Act; emergency implementation; comments due by 2-28-00; published 1-28-00
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic Fishery Management Council; hearings; comments due by 3-1-00; published 2-3-00
Northeastern United States fisheries—
Atlantic sea scallop; comments due by 3-1-00; published 2-4-00
Dealer and vessel reporting requirements; comments due by 3-2-00; published 2-16-00
Summer flounder, scup, and Black Sea bass; comments due by 2-28-00; published 1-28-00
West Coast States and Western Pacific fisheries—
Western Pacific pelagic; comments due by 3-3-00; published 2-17-00

DEFENSE DEPARTMENT
Air Force Department
Sales and services:
Release, dissemination, and sale of visual information materials; comments due by 2-28-00; published 12-28-99

ENERGY DEPARTMENT
Nuclear waste repositories:
Yucca Mountain Site, NV; suitability guidelines; hearings; comments due by 2-29-00; published 1-14-00

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Central air conditioners and central airconditioning heat pumps—
Energy conservation standards; comments due by 2-28-00; published 2-17-00
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Warm air furnaces and heating, air conditioning, and water heating equipment; test procedures and efficiency standards, etc.; comments due by 2-28-00; published 12-13-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Idaho; comments due by 2-28-00; published 1-27-00
Water programs:
Water quality planning—
Management regulation listing requirements; comments due by 3-3-00; published 2-2-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile radio services—
Wireless services campatibility with enhanced 911 services; reconsideration petitions; comments due by 2-28-00; published 12-29-99
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction; comments due by 2-29-00; published 2-14-00

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Boards of directors and senior management; powers and responsibilities; comments due by 3-3-00; published 1-3-00

FEDERAL MARITIME COMMISSION
Ocean transportation intermediaries; individual contemporaneously acting as qualifying individual for ocean freight forwarder and non-vessel common carrier; comments due by 2-28-00; published 2-14-00

FEDERAL RESERVE SYSTEM
Equal credit opportunity, electronic fund transfers, consumer leasing, truth in lending, and truth in savings (Regulations, B, E, M, Z, and DD)
Disclosure requirements; delivery by electronic communication; comments due by 3-3-00; published 12-15-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Administrative practice and procedure:
Citizen petitions; miscellaneous amendments; comments due by 2-28-00; published 11-30-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
San Diego ambrosia; comments due by 2-28-00; published 12-29-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 2-29-00; published 2-14-00

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Flame-resistant conveyor belts; comments due by 2-28-00; published 12-28-99
Underground coal mines—
Electric motor-driven mine equipment and accessories and high-voltage longwall equipment; comments due by 2-28-00; published 12-28-99

LABOR DEPARTMENT
Occupational Safety and Health Administration
Occupational safety and health standards:
Ergonomics program; comments due by 3-2-00; published 2-1-00

PERSONNEL MANAGEMENT OFFICE

Group life insurance; Federal employees:

Life insurance improvements; comments due by 2-28-00; published 12-28-99

Pay administration:

Back pay, holidays, and physicians' comparability allowances; comments due by 2-28-00; published 12-28-99

POSTAL SERVICE

Domestic Mail Manual:

Commercial mail receiving agency; mail delivery; comments due by 3-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades, anchorage regulations, and ports and waterways safety:

OPSAIL 2000, San Juan, PR; exclusion areas; comments due by 2-28-00; published 1-13-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

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Bombardier; comments due by 3-2-00; published 2-1-00

EMBRAER; comments due by 3-3-00; published 2-2-00

Empresa Brasilera de Aeronautica S.A.; comments due by 3-3-00; published 2-2-00

McDonnell Douglas; comments due by 3-3-00; published 1-18-00

Raytheon; comments due by 2-28-00; published 1-12-00

Class D airspace; comments due by 3-3-00; published 1-18-00

Class E airspace; comments due by 2-29-00; published 1-5-00

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Dedicated short range communications in intelligent transportation systems commercial vehicle operations; comments due by 2-28-00; published 12-30-99

TREASURY DEPARTMENT

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Entity classification changes; special rule for foreign eligible entities; comments due by 2-28-00; published 11-29-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2130/P.L. 106–172

Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000 (Feb. 18, 2000)

Last List February 16, 2000

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